

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

Complaint no.:	5029 of 2023
Date of decision:-	18.09.2024

1. Mrs. Monika Sanyal
2. Mr. Saurav Kumar Sanyal
Both R/o:- Ireo Victory Valler, Tower-D-20,
Flat no. 202, Sector-67, Gurugram.

Complainants

Versus

M/s. ATS Real Estate Builders Private Limited.
Regd. office:711/90, Deepali, Nehru Place,
New Delhi.

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Sh. Amarjeet Kumar (Advocate)

Complainants

Sh. M.K. Dang (Advocate)

Respondent

ORDER

1. The present complaint dated 06.11.2023 has been filed by the complainants/allottees 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 as provided under the provision of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

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 and delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	"ATS Marigold", Sector-89A, Gurgaon.
2.	Nature of the project	Group housing
3.	Project Area	11.125 acres
4.	DTCP license no.	License No.-87 of 2013 Dated-11.12.2013
5.	HRERA Registered	Registered Vide registration no. 55 of 2017 Dated-17.08.2017
6.	Unit no.	No. 2122, Floor-12, Tower-2 (As on page no. 28 of complaint)
7.	Unit area	2150sq.ft. [Super Built-up Area]

		1820sq.ft. [Built up area] (As on page no. 28 of complaint)
8.	Allotment letter	05.10.2015 (As on page no. 28 of complaint)
9.	Date of execution of Apartment Buyer's Agreement	05.10.2015 (As on page no. 30 of complaint)
10..	Possession clause	<p>CLAUSE-6.2</p> <p><i>The Developer shall endeavor to complete the construction of the Apartment within 42(forty two) months from the date of this Agreement, with the grace period of 6 (six) months i.e. ("Completion Date"), , subject always to timely payment of all charges as stipulated herein. The Company will send possession Notice and offer possession of the Apartment to the Applicant(s) as and when the Company receives the occupation certificate from the competent authority(ies).</i></p> <p>[Emphasis supplied] (As on page no. 41 of complaint)</p>
11..	Due date of possession	05.10.2019 [Calculated 42 months + 6 months from the date of execution of BBA]
	Tri-partite agreement [Between parties and ICICI Bank] [An amount of	05.10.2015 (As on page no. 63 of complaint) [Note: Respondent was to pay Pre-EMIs till the offer of

	Rs,1,07,48,247/- was sanctioned]	possession]
13.	Total sales consideration	Rs.1,42,41,250/- (As on page no. 29 of complaint)
14.	Total amount paid by the complainant	Rs.1,50,63,974/- (As per customer ledger dated 19.09.2023 on page no. 81 of complaint)
15.	Occupation certificate	16.06.2023 (As on page no. 87 of reply)
16.	Offer of possession	20.06.2023 (As on page no. 90 of reply)

B. Facts of the complaint:

1. The complainants have made the following submissions in the complaint:
 - I. That the respondent is engaged in the business of real and is a business house that boasts of being ethical and efficient. That in the year 2014-2015, the respondent launched their housing project i.e., "ATS Marigold", situated at sector 89-A, Gurugram. The said project was launched with much fervor and fanfare and was marketed with boastful claims and propaganda of having world-class amenities and space.
 - II. That the complainants were contacted by the marketing team of the respondent and they made boastful claim about the project. Believing the representations made by the respondent's agent to

- be true the complainants were induced to buy the unit in the said project.
- III. That the complainants were induced into buying the unit in the project and accordingly applied for it vide application dated 26.07.2015, believing the promise of timely delivery of the unit and upon assurance that it shall be developed within a period of 4 years and the delivery/possession shall be given by 2019.
- IV. That it is pertinent to mention here that the respondent was neither having the zonal plan approval or the building plan approval on the said date, however despite that the unit was sold to the complainants representing that they had all the requisite approvals for the said project. That inviting application for the project itself was illegal in nature since on the day of inviting application for the said project, the building plans approval was not obtained.
- V. That the complainants were allotted a unit bearing no.2122 on 12th Floor in Tower No. 12 having super area of 2150sq. ft vide Allotment letter dated 05.10.2015. As per the allotment letter dated 05.10.2015, the total sale consideration of the unit was Rs.1,42,41,250/-.
- VI. That the Apartment Buyer's Agreement was executed between the parties on 05.10.2015. As per Clause .6.2 of the Agreement, the respondent had agreed to deliver the possession of the unit within 42 months from the date of execution of the builder buyer agreement i.e., 05.04.2019.
- VII. That complainants opted for Subvention Scheme and as per the Tripartite agreement dated 05.10.2015, the respondent was

supposed to pay PRE EMI till the offer of possession. The complainants have taken a loan of Rs.1,07,48,247/- from ICICI Bank. It is pertinent to mention here that the respondent has lured the complainants to book the unit under the subvention scheme, instead of construction linked plan, wherein the total sum of the agreed loan amount was released to the respondent at the very first instance rather than receiving the same as per the construction wise stage. Thus, by mere paying the Pre EMI interest, the respondent cannot evade the liability under the Act, which specifically provides for delayed interest as per Section 18 of the Act.

- VIII. That the total consideration of the unit as per the BBA was Rs.1,42,41,250/-. The complainants have already made a payment of Rs.1,50,63,974/- till date which is far more than what has been agreed upon.
- IX. That several demands were raised by the respondent on account of stage wise construction of the project, though they were not entitled to do the same. That from the demands as raised by the respondent, the complainants were under the bonafide belief that the construction was in full swing and the respondent will be able to handover possession of the unit on time since the payments were being made on the basis of construction.
- X. That despite receiving of more than 100% of the total sale consideration of the unit the respondent has failed to deliver the possession of the unit to the complainants within the stipulated period.

- XI. That on 20.06.2023, the respondent sent an offer of possession but when the complainant visited the flat, that flat and entire project complex was not in a habitable condition which clearly shows that ulterior motive of the respondent was to extract money from the complainants fraudulently.
- XII. That the respondent in the said offer of possession has not provided any compensation for delayed possession despite the fact that the unit was supposed to be handed over on or before April 2019 and on contrary has demanded more than what was agreed upon. That upon protest being raised by the complainant, the complainants were informed that a sum of Rs.3,28,655/- was charged to adjust moratorium amount payable against the unit. That it is pertinent to mention here that no such request seeking moratorium was ever made by the complainants. That the respondent in connivance with the Bank on its own has availed this Moratorium without informing the complainants, which is not only illegal but against the honest business practice. That in order to befool the complainants, the respondent promised to get the same adjusted against the transfer charges and accordingly sent across a settlement agreement to get the same executed.
- XIII. That the complainants have already made the payment of the last illegal demand raised by the respondent and requested the respondent to handover possession of the unit. However, the respondent till date of the filing of the present case has failed to handover the possession of the unit and thus the complainants are filing the present complaint.

XIV. That the complainants paid their hard earned money, in the hope that they will have a bigger house to live in. On account of non-delivery of possession of the unit by the respondent within stipulated period, the complainants have certainly suffered harassment and mental agony for which they need to be suitably compensated on account of delay in handing over the possession of the unit.

XV. That the complainants have requested the respondent several times via telephonic calls and also personally visiting the office of the respondent to deliver possession of the unit along with prescribed interest on the amount paid by the complainants but the respondent has flatly refused to do so.

C. Relief sought by the complainant:

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

- i. Direct the respondent to pay interest on the total amount paid by the complainants on account of delay in handing over possession of the unit.
- ii. Direct the respondent to deliver possession of the unit to the complainants.

D. Reply by respondent:

5. The respondent has made following submissions by way of written submissions:

- I. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The Apartment Buyer's Agreement was executed between the complainants and the respondent prior to the enactment of the Real Estate (Regulation

and Development) Act, 2016 and the provisions laid down in the said Act cannot be applied retrospectively.

- II. That the complaint is bad for mis-joinder of parties. That the complaint is bad for non-joinder of necessary parties.
- III. That the complaint is not maintainable for the reason that the agreement contains an Arbitration Clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e. Clause 21.1 of the Buyer's Agreement, which is reproduced for the ready reference of this Hon'ble Authority-

"All or any disputes that may arise with respect to the terms and conditions of this Agreement, including the interpretation and validity of the provisions hereof and the respective rights and obligations of the parties shall be first settled through mutual discussion and amicable settlement, failing which the same shall be settled through arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 and any statutory amendments/modifications thereto by a sole arbitrator who shall be mutually appointed by the parties or if unable to be mutually appointed then to be appointed by the Court. The decision of the Arbitrator shall be final and binding on the parties."

- IV. That the respondent is a reputed real estate company having immense goodwill, comprised of law abiding and peace loving persons and has always believed in satisfaction of its customers. The complainants, after checking the veracity of the project, 'ATS Marigold', Sector 89A, Gurugram had applied for allotment of an apartment vide Booking Application Form dated 27.08.2015. The complainants had agreed to be bound by the terms and conditions of the Booking Application Form.
- V. That the respondent vide Allotment Letter dated 05.10.2015 allotted an apartment bearing no. 2122 on the 1^{2th} floor of tower



no. 2 having super built up area of 1820 sq. ft. for a sale consideration of Rs. 1,42,41,250/- exclusive of service tax, stamp duty, registration and other applicable charges etc to the complainants. That the complainants signed and executed the Apartment Buyer's Agreement on 05.10.2015 and agreed to be bound by the terms and conditions contained therein. That the complainants had opted for the subvention scheme and availed loan facility from ICICI Bank Ltd. and a tripartite agreement dated 05.10.2015 was entered into between the parties to the complainants with ICICI Bank Ltd. The respondent has raised payment demands from the complainants in accordance with the mutually agreed terms and conditions of the allotment as well as of the payment plan.

- VI. That as per the said tripartite agreement, the respondent was to pay Pre-EMI interest during the subvention period i.e. for a period of 36 months on behalf of the complainants which was otherwise payable by the complainants. However, the complainants requested the respondent to pay the pre-EMIs to ICICI Bank till offer of possession. Accordingly, letter dated 06.10.2015 was issued by the respondent as per which the respondent was to pay pre-EMIs to ICICI Bank upto the offer of possession. After the respondent offered the possession of the unit in question, it was obligatory upon the complainants to take possession of the unit within 30 days of dispatch of possession notice after completing all possession formalities. It was also agreed between the parties that since the respondent had undertaken to pay Pre-EMIs till the offer of possession, the complainants will not be entitled to claim



delay compensation or any other compensation and the Apartment Buyers Agreement dated 05.10.2015 stood modified to that extent vide the said letter dated 06.10.2015. That after completing the construction, the respondent vide its letter dated 11.10.2022, intimated the complainants that their unit is ready for carrying fit-out works and requested them to complete the interior/fit-out work within 3 months.

VII. That the possession of the unit was supposed to be offered to the complainants in accordance with the agreed terms and conditions of the Buyer's Agreement. Clause 6.2 of the Buyer's Agreement states that

"The Developer shall endeavor to complete the construction of the Apartment within 42 months from the date of this Agreement with a grace period of 6(six) months (Completion Date) subject to timely payment of all the charges...The company will send possession notice and offer possession of the Apartment to the Applicant as and when the company receives the occupation certificate from the competent authorities (ies)... Notwithstanding the same, the Developer shall be entitled to an extension of time from the expiry of the Completion date if the completion of the construction is delayed on account of the following reasons:-

- a) Non-availability of steel, cement, other building materials, water or electrical supply or labour, or*
- b) Any change in the applicable law or existence of any injunction, stay order, prohibitory order or directions passed by any court, tribunal, body or competent authority; or*
- c) Delay in securing any permission, approvals, NOC, sanction building plan, building completion and/or occupation certificate, water electricity, drainage or sewerage connection from the Competent authority for reasons beyond the control of the Developer; or*
- d) Force majeure event or any other reason (not limited to the reasons mentioned above) beyond the control of or unforeseen by the Developer which may prevent or delay the developer in performing its obligations as specified in the Agreement.*

It is specifically agreed between the developer and the Buyer that for any delay for the reasons mentioned above, the developer shall not be liable to pay any compensation of nature whatsoever to the buyer."

- VIII. That the construction was to be completed within a period of 42 months from the date of the agreement and the same was subject to the occurrence of force majeure conditions. The possession of the unit was to be handed over to the complainants only after the receipt of the Occupation Certificate from the concerned authorities. It is pertinent to mention here that the respondent has already completed the construction of the tower in which the unit allotted to the complainants is located.
- IX. That after the completion of the construction, the respondent had applied for the grant of the Occupation Certificate vide application dated 26.08.2022. The occupation certificate for the tower in question was granted on 16.06.2023 and the respondent offered the possession to the complainants on 20.06.2023.
- X. That at the time of offering of possession to the complainants, the complainants were liable to pay a sum of Rs. 15,41,962/- including interest for delayed period to the respondent.
- XI. That the implementation of the project was hampered and most of the work was stalled due to non-payment of instalments by allottees on time and also due to the events and conditions which were beyond the control of the respondent and which have affected the materially affected the construction and progress of the project. Some of the Force Majeure events/conditions which were beyond the control of the respondent and affected the implementation of the project and are as under:

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(I) Inability to undertake the construction for approx. 7-8 months due to Central Government's Notification with regard to Demonetization:

[Only happened second time in 71 years of independence hence beyond control and could not be foreseen]. The respondent had awarded the construction of the project to one of the leading construction companies of India. The said contractor/ company could not implement the entire project for approx. 7-8 months w.e.f from 9-10 November 2016 the day when the Central Government issued notification with regard to demonetization. During this period, the contractor could not make payment to the labour in cash and as majority of casual labour force engaged in construction activities in India do not have bank accounts and are paid in cash on a daily basis. During Demonetization the cash withdrawal limit for companies was capped at Rs. 24,000 per week initially whereas cash payments to labour on a site of the magnitude of the project in question are Rs. 3-4 lakhs per day and the work at site got almost halted for 7-8 months as bulk of the labour being unpaid went to their hometowns, which resulted into shortage of labour. Hence the implementation of the project in question got delayed due on account of issues faced by contractor due to the said notification of Central Government.

Further there are studies of Reserve Bank of India and independent studies undertaken by scholars of different institutes/universities and also newspaper reports of Reuters of the relevant period of 2016-17 on the said issue of impact of demonetization on real estate industry and construction labour.



The Reserve Bank of India has published reports on impact of Demonetization. In the report- Macroeconomic Impact of Demonetization, it has been observed and mentioned by Reserve Bank of India at page no. 10 and 42 of the said report that the construction industry was in negative during Q3 and Q4 of 2016-17 and started showing improvement only in April 2017.

Furthermore, there have been several studies on the said subject matter and all the studies record the conclusion that during the period of demonetization the migrant labour went to their native places due to shortage of cash payments and construction and real estate industry suffered a lot and the pace of construction came to halt/ or became very slow due to non-availability of labour. Some newspaper/print media reports by Reuters etc. also reported the negative impact of demonetization on real estate and construction sector.

That in view of the above studies and reports, the said event of demonetization was beyond the control of the respondent, hence the time period for offer of possession should be deemed to be extended for 6 months on account of the above.

(II) Orders Passed by National Green Tribunal: In last four successive years i.e. 2015-2016-2017-2018, Hon'ble National Green Tribunal has been passing orders to protect the environment of the country and especially the NCR region. The Hon'ble NGT had passed orders governing the entry and exit of vehicles in NCR region. Also the Hon'ble NGT has passed orders with regard to phasing out the 10 year old diesel vehicles from NCR. The pollution levels of NCR region have been quite high for

couple of years at the time of change in weather in November every year. The Contractor of the respondent could not undertake construction for 3-4 months in compliance of the orders of Hon'ble National Green Tribunal. Due to following, there was a delay of 3-4 months as labour went back to their hometowns, which resulted in shortage of labour in April -May 2015, November- December 2016 and November- December 2017. The district administration issued the requisite directions in this regard.

In view of the above, construction work remained very badly affected for 6-12 months due to the above stated major events and conditions which were beyond the control of the respondent and the said period is also required to be added for calculating the delivery date of possession. Copy of the Order dated 07.04.2015 passed by NGT is annexed as **Annexure R11**. Copies of Studies of Reserve Bank of India and other studies and news reports are **Annexure R12 (Colly)**. Copy of press release of Environment Pollution (Prevention and Control) Authority (EPCA) for stopping of construction activity in 2018 is **Annexure R13**.

- (III) **Non-Payment of Instalments by Allottees**: Several other allottees were in default of the agreed payment plan, and the payment of construction linked instalments was delayed or not made resulting in badly impacting and delaying the implementation of the entire project.
- (IV) **Inclement Weather Conditions viz. Gurugram**: Due to heavy rainfall in Gurugram in the year 2016 and unfavorable weather



conditions, all the construction activities were badly affected as the whole town was waterlogged and gridlocked as a result of which the implementation of the project in question was delayed for many weeks. Even various institutions were ordered to be shut down/closed for many days during that year due to adverse/severe weather conditions. Copies of media reports for the same are attached herewith as **Annexure R14**. This period is also required to be added to the timeline for offering possession by the respondent.

- (V) **Covid-19 Outbreak**:- The outbreak of the deadly Covid-19 virus has resulted in significant delay in completion of the construction of the projects in India and the real estate industry in NCR region has suffered tremendously. The outbreak resulted in not only disruption of the supply chain of the necessary materials but also in shortage of the labour at the construction sites as several labourers have migrated to their respective hometowns. The Covid-19 outbreak which has been classified as 'pandemic' is an Act of God and the same is thus beyond the reasonable apprehension of the respondent.

The time period covered by the above mentioned force majeure events is required to be added to the time frame mentioned above. The respondent cannot be held responsible for the circumstances which were beyond its control.

- XII. That despite the force majeure events, the respondent has obtained the occupation certificate and offered the possession of the unit in question to the complainants. There has been no delay whatsoever on the part of the respondent. The respondent has

strictly abided by the terms and conditions of the Builder Buyer's Agreement. On the other hand, even though the complainants had been called upon to take the possession of their unit after payment of the amount due to the respondent and fulfillment of the requisite formalities, the complainants are intentionally not coming forward to fulfill the requisite formalities and take over the physical possession of the unit and have been raising absolutely baseless and frivolous disputes with the respondent. The complainants have stated that they would not take over the physical possession of the unit in question till the time the respondent pays delay possession charges to the complainants.

- XIII. That the demands of the complainants are highly untenable, misconceived and aimed at blackmailing the respondent. A bare perusal of Annexure C7 annexed by the complainants with their complaint clearly reveals that complainants were very well aware that since the respondent shall bear the pre EMIs payable by the complainants till offer of possession, no delay possession charges or any other type of compensation whatsoever was payable by the respondent to the complainants. Complainant no. 2 had also replied to the respondent vide e-mail dated 11th October, 2023 at 12:22 PM without disputing the said fact that the complainants were not entitled to any DPC amount.
- XIV. That now instead of completing their requisite formalities and obtaining possession of the unit, the complainants have filed the present highly false, frivolous and baseless complaint with totally mala fide and dishonest intentions of arm twisting, blackmailing, pressurizing and harassing the respondent. The fact of the matter

is that the complainants are real estate investors who had booked the unit in question with a view to earn quick profit in a short span of time. However, it appears that their calculations went wrong on account of slump in the real estate market and the complainants now want to somehow get out of the concluded contract on highly flimsy and baseless grounds. Such mala fide tactics of the complainants cannot be allowed to succeed.

- XV. That in the facts and circumstances of the present case, a direction is required to be given by the Authority to the complainants that upon complying with the requisite formalities, they are required to take over the possession of the said unit. Moreover, as already stated, the complainants are not entitled to any delay possession charges and the complaint is liable to be dismissed.
6. Copies of all the relevant documents have been filed and placed on 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:

7. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.1 Territorial jurisdiction

8. 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

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

Section 11(4)(a)

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

10. 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 objections raised by the respondent

F.I Objection regarding delay due to force majeure circumstances

11. The respondent-promoter has raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the National Green Tribunal, Environment Pollution (Prevention & Control) Authority,



shortage of labour and stoppage of work due to lock down due to outbreak of Covid-19 pandemic. Since there were circumstances beyond the control of respondent, so taking into consideration the above-mentioned facts, the respondent be allowed the period during which his construction activities came to stand still, and the said period be excluded while calculating the due date. In the present case, the allotment letter was issued by the respondent to the complainant on 05.10.2015. The apartment buyer's agreement was executed between the parties on 05.10.2015. Thus, the due date for completion of project was 05.10.2019 . The respondent is seeking the benefit of covid-19, which came into picture after the due date of possession. Though there have been various orders issued to curb the environment pollution, but these were for a short period of time. So, the circumstances/conditions after that period can't be taken into consideration for delay in completion of the project. Thus, the Authority is of the view that no relief w.r.t this can be granted to the respondent.

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

12. One of the contentions of the respondent is 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 buyer's agreement executed between the parties. The respondent further submitted

that the provisions of the Act are not retrospective in nature and the provisions of the Act cannot undo or modify the terms of buyer's agreement duly executed prior to coming into effect of the Act.

13. 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/situations 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 hon'ble Bombay High Court in **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 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."

14. Also, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya*** 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."

F.III. Objection regarding the complainant is in breach of agreement for non-invocation of arbitration.

15. The respondent submitted that the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute.
16. The Authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems



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

G. Findings on the relief sought by the complainants.

G.I Direct the respondent to pay interest on the total amount paid by the complainants on account of delay in handing over possession of the unit.

17. In the present complaint, the complainants intend to continue with the project and are seeking possession and 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

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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. **Admissibility of grace period:** The promoter was obligated to hand over the possession of the unit by 05.10.2019 as the same has been undertaken by the respondent in clause 6.2 of the Apartment Buyer's Agreement dated 05.10.2015.
19. **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."*
20. 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.

21. 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., 18.09.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
22. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(z) "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;"

23. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.
24. 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. As per clause 6.2 of the apartment buyer's agreement dated 05.10.2015, the possession was to be handed over to the complainant within 42 months from the

date of execution of the agreement alongwith a grace period of 6 months. Therefore, the due date of handing over possession is 05.10.2019. The respondent has offered the possession of the subject apartment on 20.06.2023 after obtaining the occupation certificate on 16.06.2023.

25. 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 allottees, shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 05.10.2019 till offer of possession plus two months after obtaining occupation certificate from the competent authority or actual handing over of possession 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

26. 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 the interest at the prescribed rate i.e., 11.10% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 05.10.2019 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 complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iii. The rate of interest chargeable from the allottees/complainants by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoters 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.
 - iv. The respondent shall not charge anything from the complainant which is not the part of the agreement.
27. Complaint stands disposed of.
28. File be consigned to registry.

Ashok Sangwan
(Member)

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 18.09.2024

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