

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

Date of Decision: 14.02.2025

NAME OF THE BUILDER		ATS REAL ESTATE BUILDERS PRIVATE LIMITED	
PROJECT NAME		"ATS MARIGOLD"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/4137/2023	Tej Singh Raghav V/S ATS Real Estate Builders Private Limited	Shri Sushil Yadav (Advocate) Shri M.K Dang (Advocate)
2.	CR/4192/2023	Kuldeep Kumar V/S ATS Real Estate Builders Private Limited	Shri Sushil Yadav (Advocate) Shri M.K Dang (Advocate)

CORAM:

Shri Arun Kumar

Chairman

ORDER

1. This order shall dispose of two complaints titled as above filed before this authority under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.
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, "ATS Marigold" being developed by the same



respondent/promoter i.e., M/s ATS Real Estate Builders Private Limited. The terms and conditions of the buyer's agreements, fulcrum of the issues involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking delay possession charges along with interest and other.

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

Project Name and Location	ATS Real Estate Builders Private Limited at "ATS Marigold" situated in Sector- 89A, Gurugram.				
Project Area DTCP License No.	11.125 Acres 87 of 2013 dated 11.10.2013 valid upto 10.10.2017				
RERA Registered	Registered Vide registration no. 55 of 2017 dated 17.08.2017 Valid upto 31.07.2021				
Possession Clause: -					
6. Completion of construction					
6.2					
<i>The Developer shall endeavor to complete the construction of the Apartment <u>within 42 (forty-two) months from the date of this Agreement, with the grace period of 6 (six) months ie. ("Completion Date")</u>, subject always to timely payment of all charges including the basic sale price, stamp duty, registration fees and other 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>					
Occupation certificate: - 16.06.2023.					
Sr. No.	Complaint no. / Title/ Date of Filing / Reply	Unit no. and area	Date of builder buyer agreement	Status of Possession	Total sale consideration and amount paid
1.	CR/4137/2023 Tej Singh Raghav V/S ATS Real Estate Builders Private Limited DOF	5164, 16 th floor, Tower-5 1750 sq. ft. (page 13 of complaint)	18.12.2014 (page 12 of complaint)	Due date of possession: 18.12.2018 including grace period of 6 months OFP: 20.06.2023	TSC: - Rs. 1,19,06,250/- (As per schedule III at page no. 41 of the complaint) AP: - Rs. 1,11,01,777/- (As per statement of



	06.09.2023 Reply 21.03.2024			(page 46 of complaint)	account at page 44 of complaint)
2.	CR/4192/2023 Kuldeep Kumar V/S ATS Real Estate Builders Private Limited DOF 06.09.2023 Reply 21.03.2024	5024, 2 nd floor, Tower-05 1750 sq. ft. (page 15 of complaint)	22.08.2016 (page 13 of complaint)	Due date of possession: 22.08.2020 including grace period of 6 months OFFP: 20.06.2023 (page 46 of complaint)	TSC: - Rs. 1,10,31,250/- (As per schedule III, page no. 43 of the complaint) AP: - Rs. 1,02,01,470/- (As per statement of account at page 47 of complaint)

The complainants in the above complaint(s) have sought the following reliefs:

1. Direct the respondent to pay delayed possession charges at the prescribed rate.
2. Direct the respondent to handover the physical possession of the said unit to the complainant.

Note: In the table referred above, certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing complaint
TSC	Total Sale consideration
AP	Amount paid by the allottee(s)
OFFP	Offer of possession
PH	Physical Handover
CD	Conveyance Deed

4. The aforesaid complaints were filed against the promoter on account of violation of the apartment buyer's agreement and allotment letter against the allotment of units in the project of the respondent/promoter and for not handing over the possession by the due date, seeking award of possession along with delayed possession charges.
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/4137/2023 titled as Tej Singh Raghav V/S ATS Real Estate Builders Private Limited** are being taken into consideration for determining the rights of the allottee(s) qua delayed possession charges along with interest and others.

A. Unit and project related details

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

S. No.	Heads	Information
1.	Name and location of the project	"ATS Marigold", Sector 89A, Gurugram
2.	Nature of the project	Residential Group Housing
3.	Project area	11.125 acres
4.	DTCP License	87 of 2013 dated 11.10.2013 valid till 10.10.2017
	Name of the licensee	Dale Developers Private Limited & Gabino Developers Pvt. Ltd.
5.	HRERA registered/ not registered	Registered vide no. 55 of 2017 dated 17.08.2017 valid till 31.07.2021
6.	Application dated	01.07.2014 (A per page no. 13 of complaint)
7.	Allotment letter dated	17.11.2014 (As per page no. 13 of complaint)
8.	Date of execution of apartment buyer's agreement	18.12.2014 (As per page no. 12 of complaint)
9.	Unit no.	5164 on 16 th floor, tower 5 (As per page no. 13 of complaint)

10.	Super Area	1750 sq. ft. (As per page no. 13 of complaint)
11.	Total consideration	Rs. 1,19,06,250/- (As per schedule III at page no. 41 of the complaint)
12.	Total amount paid by the complainant	Rs. 1,11,01,777/- (As per statement of account at page 44 of complaint and as alleged by the complainant on page no. 9 of complaint)
13.	Possession clause	Clause 6.2 (The Developer shall endeavor to complete the construction of the Apartment <u>within 42 (forty-two) months from the date of this Agreement, with the grace period of 6 (six) months ie. ("Completion Date")</u> , subject always to timely payment of all charges including the basic sale price, stamp duty, registration fees and other 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)..)
14.	Due date of possession	18.12.2018 (Calculated from the date of the agreement i.e.; 18.12.2014 + grace period of 6 months) Grace period is allowed
15.	Occupation Certificate	16.06.2023 (Page 51 of reply)
16.	Offer of possession	20.06.2023 (as per page 46 of complaint)

B. Facts of the complaint:

8. The complainant has made the following submissions in the complaint:
9. That the complainant after relying on the promises of the respondent booked an apartment ad-measuring 1750 sq. ft. in the aforesaid project of the respondent for total sale consideration is Rs 1,19,06,250/-.



10. That the complainant made payment of Rs. 1,11,01,777/- to the respondent vide different cheques on different dates.
11. That apartment buyer's agreement was executed on 18.12.2014 and as per buyer's agreement the respondent has allotted a unit/flat bearing no. 5164 on 16th Floor in Tower 5, having super area of 1750 sq. ft. to the complainant. As per clause 6.2 of the agreement, the respondent had agreed to deliver the possession of the flat within 42 months from the date of builder buyer agreement with an extended period of 6 months.
12. That the complainant used to telephonically ask the respondent about the progress of the project and the respondent always gave false impression that the work is going in full mode and accordingly asked for the payments which the complainant gave on time. When complainant visited the site he was shocked & surprised that there is no construction work is going on. The only intention of the respondent was to take payments for the unit without completing the work.
13. That despite receiving more than 95% approximately payments on time for all the demands raised by the respondent, the respondent has failed to deliver the possession of the allotted unit to the complainant within stipulated period.
14. That as per clause 6.3 of the agreement it was agreed by the respondent that in case of any delay, the respondent shall pay to the complainant a compensation @ Rs.5/- per sq. ft. per month of the super area of the unit. A clause of compensation at such a nominal rate of Rs.5/- per sq. ft. per month for the period of delay is unjust and the respondent has exploited the complainant by not providing the possession of the unit even after a delay from the agreed possession plan. If we calculate the amount in terms of financial charges it comes to approximately @ 2% per annum

rate of interest whereas the respondent charges @ 24% per annum interest on delayed payment.

15. That on the ground of parity and equity the respondent also be subjected to pay the same rate of interest, on the amount paid by the complainant from the promise date of possession till the flat is actually delivered to the complainant.

C. Relief sought by the complainant:

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

- i. Direct the respondent to pay delayed possession charges at the prescribed rate.
- ii. Direct the respondent to handover the physical possession of the said unit to the complainant.

17. 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:

18. The respondent has contested the complaint on the following grounds:

19. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The apartment buyer's agreement was executed between the complainant and the respondent prior to the enactment of the Real Estate (Regulation and Development) Act, 2016 and the provisions laid down in the said Act cannot be applied retrospectively.
20. That there is no cause of action to file the present complaint.
21. That the complainant has no locus standi to file the present complaint.
22. 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.
23. That the complainant, after checking the veracity of the project namely, 'ATS Marigold', Sector 89A, Gurugram had applied for allotment of an apartment vide booking application form dated 02.07.2013. The complainant had agreed to be bound by the terms and conditions of the booking application form.
24. That based on the said application, respondent vide its allotment offer letter dated 17.11.2014 allotted to the complainant an apartment no. 5164 on the 16th floor of tower no. 5 having super built up area of 1750 sq. ft. for a sale consideration of Rs. 1,19,06,250/-. The complainant signed and executed the apartment buyer's agreement on 18.12.2014 and the complainant agreed to be bound by the terms and conditions contained therein.
25. That the respondent raised payment demands from the complainant in accordance with the mutually agreed terms and conditions of the allotment as well as of the payment plan. The complainant made part-payment out of the total sale consideration and is bound to pay the remaining amount towards the total sale consideration of the unit along with applicable registration charges, stamp duty, service tax as well as other charges payable along with it at the applicable stage.
26. That after completing the construction, the respondent vide its letter dated 11.10.2022, intimated the complainant that his unit is ready for carrying fit-out works and requested him to complete the interior/fit-out work within 3 months.
27. That the possession of the unit was supposed to be offered to the complainant in accordance with the agreed terms and conditions of the buyer's agreement. The clause 6.2 of the buyer's agreement 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 complainant only after the receipt of the occupation certificate from the concerned authorities.

28. That after the completion of the construction, the respondent had applied for the grant of the occupation certificate vide application dated 26.08.2022. After scrutiny, the concerned authorities granted the occupation certificate for the tower in question only on 16.06.2023 and the respondent offered the possession to the complainant on 20.06.2023. As on date, the complainant is still liable to pay a sum of Rs. 14,53,329/- including interest for delayed period.
29. That the implementation of the said 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 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 :
30. 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.

31. 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.

32. 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.
33. 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.
34. 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.

35. That despite the force majeure events, the respondent has already obtained the occupation certificate and offered the possession of the unit in question to the complainant. There has been no delay whatsoever on the part of the respondent. The respondent has strictly abided by the terms and conditions of the duly executed builder buyer's agreement. On the other hand, even though the complainant had been called upon to take the possession of his unit after payment of the amount due to the respondent and fulfillment of the requisite formalities yet the complainant is intentionally not coming forward to do so even after reminder dated 27.07.2023 was sent by the respondent to the complainant. The complainant has stated that he would not take over the physical possession of the unit in question till the time the respondent pays delay possession charges to the complainant.
36. 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 those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority:

37. 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

38. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

39. 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) 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.

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

F. Findings on the 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.

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

42. The authority is of the view that the provisions of the Act are quasi retroactive to some extent in operation and would 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."*
43. Further, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-
- "34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."*
44. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules and regulations made thereunder and are not unreasonable or exorbitant in nature. Hence, in the light of above-

mentioned reasons, the contention of the respondent w.r.t. jurisdiction stands rejected.

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

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

"21.1 Dispute Resolution

"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".

46. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in **National Seeds**



Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force. Consequently, the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

47. Further, in *Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017*, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainant and builder could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short "the Real Estate Act"). Section 79 of the said Act reads as follows:-

"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellate Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in *A. Ayyaswamy (supra)*, the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act.

...
56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated kind of Agreements between the Complainants and the Builder cannot

circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section 8 of the Arbitration Act."

48. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the builder buyer agreement, the Hon'ble Supreme Court in case titled as **M/s Emaar MGF Land Ltd. V. Aftab Singh** in revision petition no. **2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018** has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view. The relevant para of the judgement passed by the Supreme Court is reproduced below:

"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."

49. Therefore, in view of the above judgements and considering the provisions of the Act, the authority is of the view that complainant are well within right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and

that the dispute does not require to be referred to arbitration necessarily. In the light of the above-mentioned reasons, the authority is of the view that the objection of the respondent stands rejected.

F.III Objections regarding force majeure

50. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by Hon'ble High Court of Punjab and Haryana, NGT and Environment Pollution (Prevention & Control) Authority, lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour and demonetization but all the pleas advanced in this regard are devoid of merit. The authority has gone through the possession clause and observed that the respondent-promoter proposes to handover the possession of the allotted unit within a period of 42 months from the date of execution of agreement with a grace period of 6 months. The date of execution of agreement is 18.12.2014 hence, the due date of possession comes out to be 18.06.2018. Further, the grace period of 6 month is allowed. Therefore, the due date of handing over of possession comes out to be 18.12.2018. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 18.12.2018. The events such as demonetization and various orders passed by Hon'ble High Court of Punjab and Haryana, NGT and Environment Pollution (Prevention & Control) Authority, were for a shorter duration of time and were not continuous as there is a delay of more than five years. Hence, in view of aforesaid circumstances, no grace period on such grounds can be allowed to the respondent- promoter. As far as delay in construction due to outbreak of Covid-19 is concerned, the



authority has allowed already allowed the grace period of 6 months which is justified and sufficient to complete the construction.

G. Findings on the relief sought by the complainant(s):

G.I Direct the respondent to pay delayed possession charges at the prescribed rate.

G.II Direct the respondent to handover the physical possession of the said unit to the complainant.

51. The above mentioned relief no. G I and GII are interrelated to each other.

Accordingly, the same are being taken up together for adjudication.

52. In the present complaint, the complainant 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, — सत्यमेव जयते

.....
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)

53. Clause 6 of the buyer's agreement provides for completion of construction and is reproduced below:

6.2.

"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 ie. ("Completion Date")., subject always to timely payment of all charges including the basic sale price, stamp duty, registration fees and other 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)."

(Emphasis supplied)

54. **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.

55. 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.

56. 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., 14.02.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

57. 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;"

58. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., **11.10%** by the respondent/ promoter which is the same as is being granted to it in case of delayed possession charges.
59. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contraventions as per provisions of rule 28, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 6.2 of the agreement executed between the parties on 18.12.2014 the possession of the subject apartment was to be delivered within 42 months from the date of execution of agreement with a grace period of 6 months. Therefore, the due date of handing over possession is 18.12.2018. The respondent has failed to handover possession of the subject apartment within prescribed time. 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 buyer's agreement dated 18.12.2014 executed between the parties.
60. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 18.12.2018 till offer of possession (20.06.2023) after obtaining occupation certificate plus two months i.e., 20.08.2023 or actual handing over of possession whichever is earlier at prescribed rate i.e., 11.10 %

p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

H. Directions of the Authority:

61. 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):

- i. The respondent is directed (in all the above mentioned complaints) to pay interest to the complainant (s) against the paid-up amount at the prescribed rate of 11.10% p.a. for every month of delay from the due date of possession till offer of possession after obtaining occupation certificate plus two months or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act read with rule 15 of the rules.
- ii. The arrears of such interest accrued from due date of possession shall be paid by the promoter to the allottees within a period of 90 days from date of this order as per rule 16(2) of the rules.
- iii. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges within a period of 30 days from the date of this order. The complainant (s) are directed to pay outstanding dues, if any remains, after adjustment of delay possession charges and thereafter the respondent shall handover the possession of the allotted unit within next 30 days.
- iv. The rate of interest chargeable from the allottees by the promoters, 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 would be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

- v. The respondent shall not to charge anything which is not part of buyer's agreement.
- vi. The amount if any already paid by the respondent to the complainant(s) shall be adjusted.
62. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
63. Complaints stand disposed of.
64. Files be consigned to registry.



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.02.2025

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GURUGRAM