BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 2822 of 2020
First date of hearing : 01.12.2020
Date of Decision : 31.03.2021

1. Shri Vivek Soin
2. Smt. Monisha Soin
Both RR House no. 704, New Rajinder Nagar, New Delhi 110060

Complainants

Versus

M/s IREO Grace Realtech Pvt. Ltd.
Office at: Ireo Campus, Arch View Drive, Ireo City, Golf Course Extension Road, Gurgaon 122101

Respondent

CORAM

Shri Samir Kumar — **Member**
Shri Vijay Kumar Goyal — **Member**

APPEARANCE

Shri Sushil Yadav — Advocate for the complainants
Shri MK Dang and Shri Garvit Gupta — Advocates for the respondent

ORDER

1. The present complaint dated 06.10.2020 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 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.

A. Unit and project related details

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

S.No.	Heads	Information
1.	Project name and location	"The Corridors", Sector 67A, Gurugram, Haryana
2.	Licensed area	37.51 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no.	05 of 2013 dated 21.02.2013
	License valid up to	20.02.2021
	Licensee	M/s Precision Realtors Pvt. Ltd. And 5 others
5.	RERA registered/not registered	Registered in 3 phases vide 377 of 2017 dated 07.12.2017 (Phase 2) vide **378 of 2017 dated 07.12.2017 (Phase 1)** vide 379 of 2017 dated 07.12.2017 (Phase 3)

		07.12.2017 (Phase 3)
6.	Validity of registration	**30.06.2020 (Phase 1)**
		30.06.2020 (Phase 2)
		31.12.2023 (Phase 3)
7.	Date of approval of building plan	23.07.2013
8.	Date of booking	06.03.2013 (Page no. 26 of the reply)
9.	Date of allotment	07.08.2013 (Page no. 37 of the reply)
10.	Unit no.	CD-A9-10-1003, 10th Floor, Tower-A9 (Page no. 17 of the complaint)
11.	Unit measuring	1891.51 sq. ft. (Page no. 17 of the complaint)
12.	Date of execution of buyer's agreement	01.12.2015 (Page no. 15 of complaint)
13.	Payment plan	Instalment payment plan. (Page no. 33 of complaint)
14.	Due date of delivery of possession (As per clause 13.3 of the apartment buyer's agreement- within 42 months from the date of approval of the building plans and/or fulfilment of the preconditions along with 180 days grace period)	23.01.2017 **Note:** - Calculated from date of approval of building plan dated 23.07.2013 **Note: - Grace period is not allowed.**
15.	Total consideration	Rs. 2,04,84,874/- (As per SOA dated 13.06.2019

		at page no. 43 of complaint)
16.	Total amount paid by the complainants	Rs. 1,80,36,702/- (As per SOA dated 13.06.2019 at page no. 43 of complaint)
17.	Offer of possession	13.06.2019 (Page no. 41 of complaint)
18.	Occupation Certificate	31.05.2019 (Cluster-A Building-A6, A7, A8, A9, A10 Cluster-B Building-B1, B2, B3, B4 Cluster-C Building C3, C4, C5, C6, C7, EWS Block-3 & Convenient Shopping (At Ground Floor of Building B1)
19.	Date of conveyance deed	12.03.2020 (Page no. 131 of reply)
20.	Delay in handing over the possession till offer of possession i.e., 13.06.2019	2 years 4 months 20 days

B. Facts of the complaint

The complainants have submitted as under: -

3. That the respondent claims themselves as reputed builders and developers and big real estate player. The respondent gave advertisement in various leading newspapers about their forthcoming project named "The Corridors" in sector67-A, Gurgaon promising various advantages, like world class amenities and timely completion/execution of the project etc. Relying on the promise and undertakings given by the

respondent in the advertisements, the complainants booked a flat admeasuring 1892.21 sq. ft. (super area) in aforesaid project of the respondent for total sale consideration of Rs. 1,85,32,443/- which includes bsp, car parking, IFMS, club membership, PLC etc. and taxes. The apartment buyer's agreement between the complainants and the respondent was executed on 01.12.2015. Out of the total sale consideration amount of Rs. 2,04,84,874/-, the complainants made most of the payments to the respondent vide different cheques on different dates.

4. That as per apartment buyers' agreement, the respondent had allotted a unit bearing no. CD-A9-10-1003 having super area of 1892.21 sq. ft. to the complainants.

5. That as per clause 13.3 of the apartment buyers' agreement, the respondent had agreed to deliver the possession of the flat within 42 months from the date of approval of building plan i.e., 23.07.2013/or fulfilment of preconditions with an extended period of 180 days and accordingly the flat was to be deliver on or before 23.07.2017.

6. That as per clause 13.5, in the event of delay by the respondent in offering the possession of the flat beyond a period of 12 months from the end of the grace period, the complainants would become entitled to opt for termination of

the allotment letter and refund of the actual paid up instalment paid by it against the flat after adjusting the interest on delayed payments along with delay compensation for 12 months and such refund shall be made by the respondent within 90 days from receipt of information to this effect from the complainants.

7. That some of the clauses in the apartment buyers' agreement that the complainants/buyers were made to sign by the respondent are one sided and biased. The complainants had signed already prepared documents and that some of the clauses contained therein were totally unreasonable and in favour of the respondent only.

8. That the complainants regularly visited the site but were surprised to see that construction was very slow. It appeared that respondent has played fraud upon the complainants. Even the respondent himself was not aware that by what time possession would be handed over. Also, the respondent constructed the basic structure which was linked to the payments and the complainants were made to pay majority of amount before the payment schedule. After the payments there has been very little progress in construction of the project. The only intention of the respondent was to take payments for the flat from the complainants without

completing the work. The structure was being erected at great speed since the structure alone was related to most of the payments in the construction linked plan. Since the respondent had received the payments linked to the floor rise, the construction has progressed slowly. This shows that respondent had mala-fide and dishonest motives and intention to cheat and defraud the complainants.

9. That despite receiving of 100% payment against all the demands raised by the respondent for the flat and despite repeated requests and reminders over phone calls and personal visits by the complainants, the respondent has failed to deliver the possession of the allotted flat to the complainants within stipulated period. The respondent sent notice of possession on 13.06.2019 after a delay of more than 1 and half years. The complainants sent a notice dated 09.07.2019 to the respondent asking for delayed compensation as the conditions mentioned in clause 13.5 of agreement.

10. That it is apparent that the construction of the project in which the complainants' flat was booked with a promise by the respondent to deliver the flat by 23.07.2017 was not completed within time for the reasons best known to the respondent, which clearly shows the ulterior motive of the

respondent to extract money from the innocent people fraudulently.

11. That due to this omission on the part of the respondent, the complainants suffered disruption on their living arrangement, mental torture, agony and also continues to incur severe financial losses. This could have been avoided if the respondent had given possession of the flat on time.

12. That as per clause 13.4 of the apartment buyers' agreement dated 01.12.2015, it was agreed by the respondent that in case of any delay, it shall pay to the complainants a compensation @ Rs. 7.5/- per sq. ft. per month of the super area of the unit for the period of the delay. It is, however, pertinent to mention herein that a clause of compensation at such a nominal rate of Rs. 7.5/- per sq. ft. per month for the period of delay is unjust, and the respondent has exploited the complainants by not providing the possession of flat on time. The respondent cannot escape the liability merely by mentioning a compensation clause in the apartment buyers' agreement. It could be seen here that respondent has incorporated the clause in one sided apartment buyers' agreement and offered to pay a sum of Rs. 7.5/- per sq. ft. for every month of delay. If we calculate the amount in terms of financial charges, it comes to approximately @2% per annum

rate of interest whereas as per the apartment buyers' agreement and demand letters, the respondent charges 20% per annum interest on delayed payment.

13. That on the ground of parity and equity, the respondent also be subjected to pay the same rate of interest. Hence, the respondent should pay interest on the amount paid by the complainants @20% per annum from the promised date of the possession along with the refund of entire money paid by the complainants as per clause 13.5 of the apartment buyers' agreement. It is however pertinent to mention here that the respondent has blatantly refused to do so and the same is totally an unfair trade practice which further shows that respondent had mala-fide and dishonest motives and intention to cheat and defraud the complainant.

C. Relief sought by the complainant:

14. The complainants have sought following reliefs:

    (i) Direct the respondent to give the delayed possession interest to the complainants from the promissory date of delivery till actual delivery of the flat in question.

15. On the date of hearing, the authority explained to the respondent/promoter about the contravention 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

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

I. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The apartment buyers' 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 there is no cause of action to file the present complaint.

III. That the complainants have no locus standi to file the present complaint.

IV. That the complainants are estopped from filing the present complaint by their own acts, omissions, admissions, acquiescence's, and laches.

V. That this authority does not have the jurisdiction to try and decide the present complaint.

VI. That the respondent has filed the present reply within the period of limitation as per the provisions of Real Estate (Regulation and Development) Act, 2016.

VII. 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 35 of the buyer's agreement.

VIII. That the complainants have not approached this authority with clean hands and have intentionally suppressed and concealed the material facts in the present complaint. The present complaint has been filed by them maliciously with an ulterior motive and it is nothing but a sheer abuse of the process of law. The true and correct facts are as follows:

A. That the complainants, after checking the veracity of the project namely, 'Corridor; Sector 67A, Gurugram had applied for allotment of a flat vide their application for provisional registration dated 08.03.2013 and booking application form dated 22.03.2013. The complainants agreed to be bound by the terms and conditions of the application for provisional registration and booking application form.

B. That based on the said applications, respondent vide its allotment offer letter dated 07.08.2013 allotted to the complainants, apartment no. CD-A9-10-1003 having tentative super area of 1891.51 sq. ft. for a sale consideration of Rs. 1,84,00,759.76/-. It was submitted that three copies of the apartment buyers' agreement were sent to the complainants by respondent vide letter dated 12.03.2014. The apartment buyers' agreement was executed between the parties on 01.12.2015 and returned to the respondent only after reminders

dated 28.05.2014 and 17.07.2014 were sent by the respondent. The complainants agreed to be bound by the terms contained in the apartment buyers' agreement. It is pertinent to mention herein that when the complainants had booked the flat with the respondent, the Real Estate (Regulation and Development) Act, 2016 was not in force and the provisions of the same cannot be applied retrospectively.

C. That the respondent raised payment demands from the complainants in accordance with the agreed terms and conditions of the allotment as well as of the payment plan. The complainants made some payments on time and defaulted in making payment towards some of the instalment demands. It was submitted that vide payment request letter dated 14.04.2013, the respondent had raised the payment demand towards the second instalment for the net payable amount of Rs. 17,05,944/-. However, the complainants made part-payment out of the demanded amount and the remaining due amount was adjusted in the next payment instalment dated 18.03.2014 as arrears.

D. That as per the agreed payment schedule vide payment request dated 17.03.2016, the respondent had raised the ninth installment

demand for the net payable amount of Rs.17,99,704.35/-. However, the complainants failed to remit the whole amount and the outstanding amount was adjusted in the next installment demand as arrears.

E. That vide payment request letter dated 14.02.2017, respondent raised the tenth installment demand for the net payable amount of Rs.11,02,482.69/-. However, the complainants defaulted in making timely payment towards the demand raised and paid the same only after a reminder dated 14.03.2017 was issued by the respondent.

F. That the possession of the unit was to be offered to the complainants in accordance with the agreed terms and conditions of the apartment buyers' agreement. It was submitted that clause 13.3 of the apartment buyers' agreement states that the respondent has to offer possession within 42 months from the date of approval of building plans. Furthermore, the complainants have further agreed for an extended delay period of 12 months from the date of expiry of the grace period as per clause 13.5 of the apartment buyers' agreement.

G. That from the aforesaid terms of the apartment buyers' agreement, it is evident that the time was to be computed from the date of receipt of all

requisite approvals. Even otherwise construction can't be raised in the absence of the necessary approvals. It is pertinent to mention here that it has been specified in sub- clause (iv) of clause 17 of the approval of building plan dated 23.07.2013 of the said project that the clearance issued by the Ministry of Environment and Forest, Government of India has to be obtained before starting the construction of the project. It was submitted that the environment clearance for construction of the said project was granted on 12.12.2013. Furthermore, in clause 39 of part-A of the environment clearance dated 12.12.2013, it was stated that fire safety plan was to be duly approved by the fire department before the start of any construction work at site. It is pertinent to mention herein that as per clause 35 of the environment clearance certificate dated 12.12.2013, the project was to obtain permission of Mines & Geology Department for excavation of soil before the start of construction. The requisite permission from the Department of Mines & Geology Department has been obtained on 04.03.2014.

H. That last of the statutory approvals which forms a part of the pre-conditions was the fire scheme approval which was obtained on 27.11.2014 and

that the time period for offering the possession, according to the agreed terms of the apartment buyers' agreement would have lapsed only on 27.11.2019. The complainants are trying to mislead this authority by making baseless, false and frivolous averments. The respondent completed the construction of the tower in which the flat allotted to the complainants is located and applied for the grant of the occupation certificate on 06.07.2017. The occupation certificate was granted by the concerned authorities on 31.05.2019. Furthermore, the respondent after completing the construction and receipt of the occupation certificate had even offered the possession of the flat to the complainants vide notice of possession dated 13.06.2019.

I. That although, the respondent has offered the possession of the flat prior to the lapse of the due date of handing over of the possession, it is pertinent to mention herein that the implementation of the said project was hampered due to non-payment of instalments by the 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

I. Inability to undertake the construction for approx. 7-8 months due to Central Government's notification with regard to demonetization: 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 in cash to the labour. During demonetization, the cash withdrawal limit for companies was capped at Rs. 24,000 per week initially whereas cash payments to labour on the site of magnitude of the project in question is Rs. 3-4 lakhs approx. 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 on account of the 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 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.

That in view of the above studies and reports, the said event of demonetization was beyond the control of the respondents, hence the time period for offer of possession should 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 years 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 respondents could not undertake construction for 3-4 months in compliance of the orders of Hon'ble National Green Tribunal. Due to this, 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 respondents and the said period is also required to be added for calculating the delivery date of possession.

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 unfavourable 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.

J. That the complainants after making complete payment have been put in possession of the flat and being fully satisfied with the same had executed conveyance deed and deed of flat both dated 10.07.2020. The complainants had conducted their own investigations and were provided with all clarifications and information regarding the project. The complainants had even acknowledged in the conveyance deed that they have taken the possession of the flat after having inspected and after being fully satisfied and that

they would not raise any objection or claim for any reason and the same would stand waived.

K. That the complainants are real estate investors who after taking possession of the flat, want to harass and pressurize the respondent to submit to their unreasonable demands on highly flimsy and baseless grounds. Such malafide tactics of the complainants cannot be allowed to succeed.

17. 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. Written arguments on behalf of the respondent

The respondent has filed written arguments dated 07.06.2021 and has submitted as under: -

1) That the complainants with mala-fide motives have filed the present false complaint before this authority wherein the complainants have alleged that they were lured by the alleged promises and representations stated to be made by the respondent to make a booking in the project of the respondent and that the agreement was allegedly one sided, arbitrary and unilateral. The complainants have rightly stated that the possession was to be handed over to the complainants within 42 months from the date of

sanction of the building plans and/or fulfilment of the pre-conditions therein. However, the complainants have wrongly stated that the due date to handover the possession was 23.07.2017. The complainants have wrongly stated that all payments were made as and when demanded and that the construction was slow. The complainants have sought delayed possession interest from the due date of delivery till actual date of delivery. The complaint is highly frivolous, baseless, untenable and false and is a sheer abuse of the provisions of the Real Estate Regulation and Development Act, 2016 and the Haryana Real Estate (Regulation and Development) Rules, 2017.

2) That the true facts are that the respondent is an established, well known and reputed real estate developer and is in the business of developing numerous prestigious residential group housing, commercial and other real estate projects in and around Gurugram. The complainants had themselves approached the respondent and had booked the flat in question by signing the booking application form and the apartment buyers' agreement was executed between the parties on 01.12.2015 only after reminders dated 28.05.2014 and 17.07.2014 were sent by the

respondent. The complainants committed several defaults in making timely payments and the respondent was constrained to send several reminders to them.

3) That it was complainants' own declaration under clause 4 of the booking application form and clause 'N' of the apartment buyers' agreement that they did not rely upon nor were influenced by any plans, brochures, advertisements, representations, promises or any other information except what was specifically stated and furthermore they made their own estimations in deciding to purchase the apartment. No representations whatsoever were made by the respondent and all the prospective buyers including the complainants had approached it on their own free will and only after checking the veracity of the project. The complainants prior to the booking of the allotment had perused all documents with regard to approvals, sanctions, permissions, right, title, interest of the respondent, payment plan, terms and conditions of booking/allotment of the unit and the same was acknowledged by the complainants vide clause 6 and 'H' of the booking application form and apartment buyers' agreement respectively.

4) That the complainants have wrongly alleged that the due date to handover the possession was 23.07.2017. The complainants are trying to mislead this authority by distorting the facts. According to clause 43 of the schedule -1 of the booking application form containing key indicators from the terms and conditions of the apartment buyer's agreement and clause 13.3 of the apartment buyers' agreement, the respondent was to offer the possession to the complainants within a period of 42 months+180 days grace period from the date of approval of the building plans and/or fulfilment of the preconditions imposed thereunder and the same has also been admitted by the complainants in para '7' of the complaint. However, the said time period was subject to the complainants complying with their obligations of making timely payments and also on occurrence of the force majeure events which were beyond the reasonable apprehension of the respondent. From the aforesaid terms of the apartment buyers' agreement, it is evident that the time was to be computed from the date of receipt of all requisite approvals. Even otherwise construction can't be raised in the absence of the necessary approvals. It is pertinent to mention here that it

has been specified in clause 17(iv) of the approval of building plan dated 23.07.2013 of the said project that the clearance issued by the Ministry of Environment and Forest, Government of India has to be obtained before starting the construction of the project. The Environment clearance for construction of the said project was granted on 12.12.2013. It is pertinent to mention herein that as per clause 35 of the environment clearance certificate dated 12.12.2013, the project was to obtain permission of Mines & Geology Department for excavation of soil before the start of construction. The requisite permission from the Department of Mines & Geology Department was granted on 04.03.2014. Furthermore, in clause 39 of part-A of the environment clearance dated 12.12.2013, it was stated that fire safety plan has to be approved before the start of construction at the site. It was submitted that the last of the statutory approvals which forms a part of the pre-conditions was the fire safety approval which was granted on 27.11.2014. In terms of agreement, the proposed time for handing over of possession has to be computed from 27.11.2014. It is pertinent to mention here that the complainants vide clause 44 of the schedule -1 of the booking application

form and clause 13.5 of the apartment buyers' agreement had further agreed to the 'Extended Delay Period' of 12 months from the end of grace period. Therefore, 60 months from 27.11.2014 (including the 180 days grace period and extended delay period) would have expired only on 27.11.2019. However, the same was subject to the occurrence of the *force majeure* conditions. The complainants were aware of the construction status of the allotted flat as is evident from a bare perusal of the payment demands which stated the construction stage and were raised after the completion of the construction milestones.

5) That it is pertinent to mention herein that the implementation of the said project was hampered 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 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: -

a) **Inability to undertake the construction for approx. 7-8 months due to Central Government's notification with regard to**

demonetization: The contractor of the respondent 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. 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.

b) **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 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.

c) **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.

d) **Inclement Weather Conditions viz. Gurugram**: Due to heavy rainfall in Gurugram in the year 2016 and unfavourable 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 relevant documents have already been attached along with the additional affidavit.

e) That Divisional Commissioner, Gurgaon directed District Town Planner, Gurgaon to stop construction at site and for nearly two months the implementation was kept in abeyance. Thus, the time period covered by the above-mentioned force majeure events was also required to be added to the time frame mentioned above. As per clauses 24.1 and 24.2 of the apartment buyer's agreement, the respondent could not be held responsible if performance of the obligations was affected due to force majeure and is entitled to extension.

f) That the present complaint has been filed without any cause of action against the respondent. The construction of the tower in which the unit allotted to the complainants is located is complete and the photographs of the

project have been attached by the respondent along with the reply which are self-speaking. The respondent had applied for the grant of occupation certificate on 06.07.2017 and the same has been granted by the concerned authorities on 31.05.2019.

g) That the complainants after making complete payment have been put in possession of the said apartment and being fully satisfied with the same had executed conveyance deed and deed of flat both dated 10.07.2020. The complainants had conducted their own investigations and were provided with all clarifications and information regarding the project. The complainants had even acknowledged vide recitals I, J, N, P and clause 3 of the conveyance deed that they have taken the possession of the flat after having inspected and after being fully satisfied and that they would not raise any objection or claim for any reason and the same would stand waived.

h) That the complainants are real estate investors who had invested monies with the respondent after making due diligence of the investment potential and has purchased the flat with a mindset of earning profit from the same. However, their calculations have gone wrong on account of slump in the real estate market, and

they are now coming up with all sorts of untenable and false afterthought stories which have no basis. There has been no deficiency on the part of the respondent in any manner. The mala-fide tactics adopted by the complainants cannot be allowed to succeed. It is, therefore, prayed that this authority may very kindly be pleased to dismiss the complaint with heavy costs payable to the respondent by the complainants.

F. Jurisdiction of the authority

The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

F. I Territorial jurisdiction

18. 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.

F. II Subject matter jurisdiction

19. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the

promoter as held in ***Simmi Sikka v/s M/s EMAAR MGF Land Ltd.*** **(complaint no. 7 of 2018)** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage. The said decision of the authority has been upheld by the Haryana Real Estate Appellate Tribunal in its judgement dated 03.11.2020, in appeal nos. 52 & 64 of 2018 titled as ***Emaar MGF Land Ltd. V. Simmi Sikka and anr.***

G. Findings on the objections raised by the respondents.

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

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

21. The authority is of the view that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. The Act nowhere provides, nor can be so construed, that all previous agreements 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)*** 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."*

22. 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."*

23. 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.

G.II Objection regarding complainants are in breach of agreement for non-invocation of arbitration

24. 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:

> ***"35. Dispute Resolution by Arbitration***
> *"All or any disputes arising out or touching upon in relation to the terms of this Agreement or its termination including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussions failing which the same shall be settled through reference to a sole Arbitrator to be appointed by a resolution of the Board of Directors of the Company, whose decision shall be final and binding upon the parties. The allottee hereby confirms that it shall have no objection to the appointment of such sole Arbitrator even if the person so appointed, is an employee or Advocate of the Company or is otherwise connected to the Company and the Allottee hereby accepts and agrees that this alone shall not constitute a ground for challenge to the independence or impartiality of the said sole Arbitrator to conduct the arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/ modifications thereto and shall be held at the Company's offices or at a location designated by the said sole Arbitrator in Gurgaon. The language of the arbitration proceedings and the Award shall be in English. The company and the allottee will share the fees of the Arbitrator in equal proportion".*

25. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the apartment buyers' 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.

26. 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 complainants and builders 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 Appellant 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."

27. 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."*

28. Therefore, in view of the above judgements and considering the provisions of the Act, the authority is of the view that complainants are well within their rights 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.

29. In the light of the above-mentioned reasons, the authority is of the view that the objection of the respondent stands rejected.

H. Findings regarding relief sought by the complainants.

Delay possession charges: To direct the respondents to give the delayed possession interest to the complainant.

30. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges at prescribed rate of interest on amount already paid by them as provided under the proviso to section 18(1) of the Act which reads as under:-

> *"**Section 18: - Return of amount and compensation***
>
> *18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*
>
> .....
>
> *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

31. Clause 13.3 of the apartment buyer's agreement (in short, the agreement) dated 01.12.2015, provides for handing over possession and the same is reproduced below:

> *"**13.3** Subject to Force Majeure, as defined herein and further subject to the Allottees having complied with all its obligations under the terms and conditions of this Agreement and not having defaulted under any provision(s) of this Agreement including but not limited to the timely payment of all dues and charges including the total Sale Consideration, registration charges, stamp duty and other charges and also subject to the Allottees having complied*

*with all formalities or documentation as prescribed by the Company, the company proposes to offer the possession of the said apartment to the allottees within a period of 42 months from the date of approval of the Building plans and/or fulfilment of the preconditions imposed thereunder ("**Commitment Period**"). The Allottees further agrees and understands that the company shall additionally be entitled to a period of 180 days ("**Grace Period**"), after the expiry of the said Commitment Period to allow for unforeseen delays beyond reasonable control of the company."*

32. The apartment buyers' agreement is a pivotal legal document which should ensure that the rights and liabilities of both builders/promoters and buyers/allottee are protected candidly. The apartment buyers' agreement lays down the terms that govern the sale of different kinds of properties like residentials, commercials etc. between the buyer and builder. It is in the interest of both the parties to have a well-drafted apartment buyers' agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the right of the buyer/allottee in case of delay in possession of the unit. In pre-RERA period, it was a general practice among the promoters/developers to invariably draft the terms of the apartment buyers'

agreement in a manner that benefited only the promoters/developers. It had arbitrary, unilateral, and unclear clauses that either blatantly favoured the promoters/developers or gave them the benefit of doubt because of the total absence of clarity over the matter.

33. The authority has gone through the possession clause of the apartment buyers' agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of the apartment buyers' agreement and the complainants not being in default under any provisions of the said agreement and in compliance with all provisions, formalities and documentation as prescribed by the respondent. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the respondent and against the complainants that even a single default by the complainant in fulfilling formalities and documentations etc. as prescribed by the respondent may make the possession clause irrelevant for the purpose of the complainants and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the apartment buyers' agreement by the respondent is just to evade the liability towards timely delivery of subject flat and to deprive the complainants of their right accruing after delay in possession. This is just to comment as to how the respondent has

misused his dominant position and drafted such mischievous clause in the agreement and the complainants are left with no option but to sign on the doted lines.

34. The respondent has proposed to handover the possession of the subject apartment within a period of 42 months from the date of approval of building plans and/or fulfilment of the preconditions imposed thereunder plus 180 days grace period for unforeseen delays beyond the reasonable control of the respondent.

35. Further, it was submitted by the respondent that the due date of possession should be calculated from the date of fire scheme approval which was obtained on 27.11.2014, as it is the last of the statutory approvals which forms a part of the preconditions. The authority in the present case observed that, the respondent has not kept the reasonable balance between his own rights and the rights of the complainants. The respondent has acted in a pre-determined and preordained manner. The respondent has acted in a highly discriminatory and arbitrary manner. The flat in question was booked by the complainants on 06.03.2013 and the apartment buyers' agreement was executed between the respondent and the complainants on 01.12.2015. The date of approval of building plan was 23.07.2013. It will lead to a logical conclusion that that the respondent would have

certainly started the construction of the project. On a bare reading of the clause 13.3 of the apartment buyer's agreement reproduced above, it becomes clear that the possession in the present case is linked to the "fulfilment of the preconditions" which is vague and ambiguous in itself. Nowhere in the agreement it has been defined that fulfilment of which conditions forms a part of the pre-conditions, to which the due date of possession is subjected to in the said possession clause. If the said possession clause is read in entirety, the time period of handing over possession is only a tentative period for completion of the construction of the flat in question and the respondent is aiming to extend this time period indefinitely on one eventuality or the other. Moreover, the said clause is an inclusive clause wherein the "fulfilment of the preconditions" has been mentioned for the timely delivery of the subject flat. It seems to be just a way to evade the liability towards the timely delivery of the subject flat. According to the established principles of law and the principles of natural justice when a certain glaring illegality or irregularity comes to the notice of the adjudicator, the adjudicator can take cognizance of the same and adjudicate upon it. The inclusion of such vague and ambiguous types of clauses in the agreement which are totally arbitrary, one

sided and totally against the interests of the allottees must be ignored and discarded in their totality. In the light of the above-mentioned reasons, the authority is of the view that the date of sanction of building plans ought to be taken as the date for determining the due date of possession of the unit in question to the complainants.

36. Here, the authority is diverging from its earlier view i.e., earlier the authority was calculating/assessing the due date of possession from date approval of firefighting scheme (as it the last of the statutory approval which forms a part of the pre-conditions) i.e., 27.11.2014 and the same was also issued by the Hon'ble Supreme Court in Civil Appeal no. 5785 of 2019 titled as ***'IREO Grace Realtech Pvt. Ltd. v/s Abhishek Khanna and Ors.'*** by observing as under: -

> *"With the respect to the same project, an apartment buyer filed a complaint under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (RERA Act) read with rule 28 of the Haryana Real Estate (Regulation & Development) rules, 2017 before the Haryana Real Estate Regulatory Authority, Gurugram (RERA). In this case, the authority vide order dated 12.03.2019 held that since the environment clearance for the project contained a pre-condition for obtaining fire safety plan duly approved by the fire department before the starting construction, the due date of possession would be required to be computed from the date of fire approval granted on 27.11.2014, which would come to 27.11.2018. Since the developer had failed to fulfil the obligation under Section 11(4)(a) of this Act, the developer was liable under proviso to*

Section 18 to pay interest at the prescribed rate of 10.75% per annum on the amount deposited by the complainant, upto the date when the possession was offered. However, keeping in view the status of the project, and the interest of other allottees, the authority was of the view that refund cannot be allowed at this stage. The developer was directed to handover the possession of the apartment by 30.06.2020 as per the registration certificate for the project."

37. On 23.07.2013, the building plans of the project were sanctioned by the Directorate of Town and Country Planning, Haryana. Clause 3 of the sanctioned plan stipulated that an NOC/ clearance from the fire authority shall be submitted within 90 days from the of issuance of the sanctioned building plans. Also, under section 15(2) and (3) of the Haryana Fire Service Act, 2009, it is the duty of the authority to grant a provisional NOC within a period of 60 days from the date submission of the application. The delay/failure of the authority to grant a provisional NOC cannot be attributed to the developers. But here the sanction building plans stipulated that the NOC for fire safety (provisional) was required to be obtained within a period of 90 days from the date of approval of the building plans, which expired on 23.10.2013. It is pertinent to mention here that the developers applied for the provisional fire approval on 24.10.2013 (as contented by the respondent herein the matter of Civil Appeal no. 5785 of 2019 titled as ***'IREO Grace Realtech Pvt. Ltd. v/s Abhishek Khanna and Ors.***) after the expiry of the mandatory 90 days period got over. The application filed was deficient and casual and did not provide

the requisite. The respondent submitted the corrected sets of drawings as per the NBC-2005 fire scheme only on 13.10.2014 (as contented by the respondent herein the matter of Civil Appeal no. 5785 of 2019 titled as ***'IREO Grace Realtech Pvt. Ltd. v/s Abhishek Khanna and Ors.***), which reflected the laxity of the developers in obtaining the fire NOC. The approval of the fire safety scheme took more than 16 months from the date of the building plan approval i.e., from 23.07.2013 to 27.11.2014. The respondent failed to give any explanation for the inordinate delay in obtaining the fire NOC. So, the complainants should not bear the burden of mistakes/ laxity or the irresponsible behaviour of the developer/respondent and seeing the fact that the developer/respondent did not even apply for the fire NOC within the mentioned time. It is a well settled law that no one can take benefit out of his own wrong. In light of the above-mentioned facts the respondent/ promoter should not be allowed to take benefit out of his own mistake just because of a clause mentioned i.e., fulfilment of the preconditions even when they did not even apply for the same in the mentioned time frame.

38. **Admissibility of grace period:** The respondent had proposed to hand over the possession of the flat within 42 months from the date of sanction of building plan and/ or fulfilment of the preconditions imposed thereunder due date of possession comes out to be 23.01.2017. The respondent promoters have sought further extension for a period of 180

days after the expiry of 42 months for unforeseen delays in respect of the said project. The respondent raised the contention that the construction of the project was delayed due to *force majeure* conditions including demonetization and the order dated 07.04.2015 passed by the Hon'ble NGT including others.

(i) **Demonetization:** It was observed that due date of possession as per the agreement was 23.01.2017 wherein the event of demonetization occurred in November 2016. By this time, major construction of the respondents' project must have been completed as per timeline mentioned in the agreement executed between the parties. Therefore, it is apparent that demonetization could not have hampered the construction activities of the respondents' project that could lead to the delay of more than 2 years. Thus, the contentions raised by the respondents in this regard are rejected.

(ii) **Order dated 07.04.2015 passed by the Hon'ble NGT:** The order dated 07.04.2015 relied upon by the respondent promoters states that

> *"In these circumstances we hereby direct state of U.P., Noida and Greater NOIDA Authority, HUDA, State of Haryana and NCT, Delhi to immediately direct stoppage of construction activities of all the buildings shown in the report as well as at other sites wherever, construction is being carried on in violation to the direction of NGT as well as the MoEF guideline of 2010."*

A bare perusal of the above makes it apparent that the above-said order was for the construction activities which were in violation of the NGT direction and MoEF guideline of 2010,

thereby, making it evident that if the construction of the respondents' project was stopped then it was due to the fault of the respondents themselves and they cannot be allowed to take advantage of their own wrongs/faults/deficiencies. Also, the allottees should not be allowed to suffer due to the fault of the respondent promoters. It may be stated that asking for extension of time in completing the construction is not a statutory right nor has it been provided in the rules. This is a concept which has been evolved by the promoters themselves and now it has become a very common practice to enter such a clause in the agreement executed between the promoter and the allotee. It needs to be emphasized that for availing further period for completing the construction the promoter must make out or establish some compelling circumstances which were in fact beyond his control while carrying out the construction due to which the completion of the construction of the project or tower or a block could not be completed within the stipulated time. Now, turning to the facts of the present case the respondent promoters has not assigned any such compelling reasons as to why and how they shall be entitled for further extension of time 180 days in delivering the possession of the unit. Accordingly, this grace period of 180 days cannot be allowed to the promoters at this stage.

39. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the rate of 18% p.a. however, proviso

to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

> ***Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***
>
> *(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:*
>
> *Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

40. 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. The Haryana Real Estate Appellate Tribunal in **Emaar MGF Land Ltd. vs. Simmi Sikka** observed as under: -

> *"64. Taking the case from another angle, the allottee was only entitled to the delayed possession charges/interest only at the rate of Rs.15/- per sq. ft. per month as per clause 18 of the Buyer's Agreement for the period of such delay; whereas, the promoter was entitled to interest @ 24% per annum*

compounded at the time of every succeeding instalment for the delayed payments. The functions of the Authority/Tribunal are to safeguard the interest of the aggrieved person, may be the allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of his dominate position and to exploit the needs of the homer buyers. This Tribunal is duty bound to take into consideration the legislative intent i.e., to protect the interest of the consumers/allottees in the real estate sector. The clauses of the Buyer's Agreement entered into between the parties are one-sided, unfair and unreasonable with respect to the grant of interest for delayed possession. There are various other clauses in the Buyer's Agreement which give sweeping powers to the promoter to cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the Buyer's Agreement dated 09.05.2014 are ex-facie one-sided, unfair and unreasonable, and the same shall constitute the unfair trade practice on the part of the promoter. These types of discriminatory terms and conditions of the Buyer's Agreement will not be final and binding."

41. 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 31.03.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.

42. 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;"

43. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same as is being granted to the complainants in case of delay possession charges.

44. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of apartment buyers' agreement executed between the parties on 01.12.2015, the possession of the booked flat was to be delivered within 42 months from the date of approval of building plan (23.07.2013) which comes out to be 23.01.2017 along with grace period of 180 days which is not allowed in the present case. Accordingly, 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

complainants are entitled to delayed possession charges at the prescribed rate of interest i.e., 9.30% p.a. for every month of delay on the amount paid by the complainants to the respondent till offer of possession of the booked unit i.e., 13.06.2019 as per the proviso to section 18(1)(a) of the Act read with rules 15 of the rules.

I. Directions of the authority: -

45. Hence, the authority hereby passes this order and issue 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 sec 34(f) of the Act:-

i. The respondent is directed to pay the interest at the prescribed rate i.e., 9.30 % per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 23.01.2017 till the offer of possession i.e., 13.06.2019.

ii. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order.

iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. The rate of interest chargeable from the allottee

by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% 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.

iv. The respondent shall not charge anything from the complainants which is not part of the apartment buyer's agreement.

46. Complaint stands disposed of.

47. File be consigned to the registry.

(Samir Kumar)
Member

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 31.03.2021

Judgement uploaded on 01.09.2021