BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 4325 of 2020
First date of hearing: 11.01.2020
Date of decision : 31.03.2021

1. Deepankur Kukreja
2. Indu Kukreja
Both RR/O: 1082, Sector 17-B, IFFCO Colony, Gurgaon, Haryana- 122001 **Complainants**

Versus

1. Ireo Grace Realtech Pvt. Ltd.
Regd. Office: - 304, Kanchan house, Karampura, Commercial Complex, New Delhi-110015
2. M/s Precision Realtors Pvt. Ltd.
Regd. Office: - 305, 3rd Floor, Kanchan house, Karampura, Commercial Complex, New Delhi-110015
3. M/s Blue Planet Infra Developers Pvt. Ltd.
Regd. Office: - 40/16, East Patel Nagar, New Delhi
4. M/s Madeira Conbuild Pvt. Ltd.
Regd. Office: - 304, Kanchan house, Karampura, Commercial Complex, New Delhi-110015
5. M/s Global Estate Partnership Firm through Partners
Regd. Office: - G-23, Ashok Vihar, Phase I, New Delhi-110052 **Respondents**

CORAM:
Shri Samir Kumar **Member**
Shri Vijay Kumar Goyal **Member**

APPEARANCE:

Shri Anuj Malhotra	Advocate for the complainants
Shri MK Dang and Shri Garvit Gupta	Advocate for the respondents

ORDER

1. The present complaint dated 25.11.2020 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 thereunder or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of unit details, 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	37.5125 acres

3.	Nature of the project	Group Housing
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)
	Validity	30.06.2020 (For phase 1 and 2) 31.12.2023 (For phase 3)
6.	Date of approval of building plan	23.07.2013
7.	Unit no.	1002, 10th Floor, Tower-C4 (Page no. 78 of the complaint)
8.	Unit measuring	1312.50 sq. ft. (Page no. 78 of the complaint)
9.	Date of booking	01.02.2013 (Page no. 26 of the reply)
10.	Date of allotment	07.08.2013 (Page no. 66 of the complaint)
11.	Date of execution of flat buyer's agreement	02.06.2014

		(Page no. 75 of the complaint)
12.	Payment plan	Construction linked payment plan (Page no. 111 of the complaint)
13.	Total consideration	Rs. 1,59,47,047/- (Page no. 132 of the complaint)
14.	Total amount paid by the complainants	Rs. 1,49,47,172/- (Page no. 132 of the complaint)
15.	Due date of delivery of possession	23.01.2017 (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 imposed thereunder along with 180 days grace period to allow for unforeseen delays) **Note:** **1.Calculated from date of approval of building plan.** **2. Grace period of 180 days is not allowed in the present case.**
16.	Offer of possession	11.06.2019

		(Page no. 74 of the reply)
17.	Occupation certificate	31.05.2019 (A6 to A10, B1 to B4 and C3 to C7) (Page no. 72 of the reply)
18.	Period of delay in handing over possession till offer of possession plus 2 months i.e., 11.08.2019	2 years 6 months 19 days

B. Facts of the complaint

The complainants have submitted that:

3. That the respondent no. 1 pre-launched the project 'The Corridors" (hereinafter referred to as the "project") located at Sector-67A, Gurgaon, Haryana, India in February 2013.

4. That on 01.02.2013, the complainants pursuant to an invitation to offer for allotment of residential apartment applied for booking of an apartment under the construction payment plan and handed over 3 cheques bearing numbers 041834 for Rs 6,25,000, cheque no. 022805 for Rs 1,25,000/- and another cheque no. 041837 for Rs 500,000/- along with the application form.

5. That it came to the knowledge of the complainants at the time of perusing various orders and judgments of this authority in respect of the said project that the cheques, as well as the booking, was done in February 2013 much before receiving a

license from Department of Town & Country Planning, Haryana (DTCP) on 22.03.2013.

6. That during the pre-launch, project was advertised with several glitzy and glossy advertisements giving the impression of a fully approved project with all amenities and facilities. The respondent no. 1 made several representations pertaining to the architecture and the landscape of their project to the complainants alluring them to book an apartment.

7. The complainants were assured that the respondent no. 1 is a trusted company and that it would provide services to the complainants diligently and efficiently.

8. That on 07.08.2013, upon submission of the booking application, the complainants were allotted apartment no. 1002, on the 10th floor, tower C-4 having a super area admeasuring 1312.50 sq. ft. approx. (the "apartment").

9. That on 02.06.2014, upon receipt of Rs. 44,20,936/- and after lapse of more than 15 months, the respondent no. 1 sent a pre-drafted, standard copy of apartment buyer's agreement (hereinafter referred to as the "agreement") to the complainants with the condition that if the same is not executed and returned within 30 days, the amount paid so far will be forfeited (para 11 of the application form on internal

page no. 5 of the said application form), the complainants were left with no choice but to agree to the arbitrary, irrational and one-sided terms.

10. The complainants had opted for a construction linked plan as specified in annexure IV to the agreement. As such, upon completion of specific milestones, a demand was raised by the respondents to the complainants which were always met, and stipulated amounts were paid by the complainants to the respondents without any delay.

11. That in accordance with the payment plan, the complainants till July 2019 had deposited a total amount of Rs. 1,49,60,105/- (Rupees one crore forty-nine lakhs sixty thousand one hundred and five only) with the respondents.

12. The building plans of the project had been approved by the Directorate of Town & Country Planning, Haryana on 23.07.2013, and the fire scheme was approved on 27.11.2014 after which the respondents were to commence construction of the project. However, it is a matter of record that the respondents had begun excavation of the project in April 2014, and accordingly, a sum of Rs 18,15,128/- was charged to the complainants on account of "excavation" and the same was duly paid.

13. That as per clause 13.3 of the agreement, the respondents were to deliver the possession of the units to the allottees within 42 months + 180 days grace period from the date of approval of the building plans and/or fulfilment of the preconditions imposed thereunder ("commitment period").

14. That clause 13.3 of the agreement is unilateral in nature and provides a variable time frame to the respondents to deliver the possession of the apartment. It was submitted that the above-mentioned clause is bad in law on the following counts:

    a) As per the said clause, the respondents proposed to apply for occupation certificate within 42 months from the date of approval of the building plan and/or fulfilment of the preconditions contained thereunder. The fire scheme approval which ought to have been received in a time-bound manner not exceeding more than 3 months, was delayed until November 2014, a period of more than 1 year 8 months. It is the apprehension of the complainants that the respondents have taken a deliberate attempt to procrastinate the receipt of fire scheme approval until November 2014 so as to push the due date of delivery to November 2018.

b) The respondents have deliberately inserted a variable time clause to shift the delivery of possession date as per convenience. It was submitted that the respondents cannot be allowed to take advantage of their own fault and such a clause allowing them to manoeuvre the scheduled date of delivery is highly unfair to the complainants. The respondents herein are playing with the liberty to delay the scheduled date of delivery upon government approvals which was also held unfair by the Hon'ble Supreme Court in ***Pioneer Urban Land & Infrastructure Ltd vs Govindan Raghavan***.

15. That the respondents kept on raising arbitrary payment demands from the complainants in the form of interest and other charges which were not in accordance with the agreement. Pertinently, according to the payment schedule of the agreement, the total price of the apartment was agreed at Rs. 1,45,22,006.88/- (Rupees one crore forty-five lakhs twenty-two thousand six and eighty-eight paise only) and the complainants have already deposited a total of Rs. 1,49,60,105/- (Rupees one crore forty-nine lakhs sixty thousand one hundred and five only). Despite paying more

than the agreed price, the respondents are still raising arbitrary payment demands.

16. That the respondents, under the agreement has unfettered power to impose an exorbitant rate of interest on the complainants to the tune of 20% on delayed payments while the respondents are only liable to pay a meagre amount of Rs. 7.50 per sq. ft. of the super built-up area of the apartment. The clauses 7.4 and 13.4 of the agreement are therefore completely unilateral, unfair, oppressive and in clear contravention of the provisions of the Real Estate (Regulation and Development) Act, 2016.

17. Further, on 06.08.2019, the complainants received an email from the respondents that the apartment is ready for possession. Upon receipt of the email, the complainants visited the project site to check the condition of the apartment and the complainants were shocked to see the quality of construction work of the apartment and the amenities installed in the apartment which was not satisfactory at all. It was submitted that the air conditioners installed by the respondents in the apartment are out of warranty period and other amenities provided by the respondents are of inferior quality.

Pertinently, the quality of construction and amenities in the apartment are not at par with the cost of the apartment.

18. That the complainants had booked the apartment with an intention to settle. It was promised by the respondents at the time of receiving payment for the apartment that the possession of a fully constructed apartment along with basement and surface parking, landscaped lawns, club/ pool, etc. as shown in the brochure, would be handed over to the complainants as soon as construction work is complete within a period of 42 months + 180 days grace period (from the date of approval of building plans, as per the agreement which were approved on 27.11.2014). Thus, the respondents have easily extended the timeline in their favor by 5.5 months i.e., until 27.11.2018. Even going by these calculations of the respondents hypothetically, the project is already delayed by over 9 months till date 06.08.2019 and the quality of construction work is not at all satisfactory. As submitted earlier, clause 13.3 is prima facie bad in law and is biased in the favor of the respondents the same should be struck down.

19. Therefore, in the terms of the above, the complainants submitted that the period of 42 months + 180 days grace period should be counted from the date of execution of the

agreement i.e., 02.06.2014, and thus the actual delay in handing over the possession of the apartment is 14 months. Pertinently, the respondents did not hand over possession of the apartment on time and has caused huge financial losses and caused mental agony to the complainants. It was submitted that in accordance with section 18 of the Act and clause 13.3 of the agreement, the complainants are liable to seek refund and compensation from the respondents.

20. That the manner of performance by the respondents, as also in relation to the service being provided by them, is inadequate, imperfect, and faulty and as such amounts to deficiency in service also and as such, they are liable to be punished and compensate the complainants along with a refund of paid money with interests.

21. That there is a clear unfair trade practice and breach of contract and deficiency in the services of the respondents and much more a smell of playing fraud with the complainants and is prima facie clear on the part of the respondents which makes them liable to answer this authority.

22. That there is an apprehension in the mind of the complainants that the respondents have been playing fraud and there is something unethical which the respondents are not disclosing

just to embezzle the hard-earned money of the complainants. It is highly pertinent to mention here that this Hon'ble Authority in the recent orders in complaint no. 382 of 2019 and 1710 of 2019 have adjudicated similar matters against the respondents.

23. That the respondents have committed major violations under the Act and is, therefore, guilty of defrauding and duping the complainants:

a. Unfair clauses:

The respondents have deliberately included unfair and biased clauses in the agreement which are completely in the favor of the respondents and the complainants had no room for negotiations in the agreement. The unfair clauses are liable to be struck down and the complainants are not bound by the same.

b. Failure to adhere to the timelines:

As per clause 13.3 of the agreement, the respondents were bound to hand over the possession of the apartment by 27.11.2018. However, the possession of the apartment is not handed over till date. Further, the clause 13.3 of the agreement provides a variable time window to deliver the offer of possession and the commencement of construction is dependent on a contingent event which is per se bad in law.

c. Violation of section 12 of the Act:

The respondents have misrepresented the quality of amenities and construction in the brochure of the project and duped the complainants into purchasing the apartment at an exorbitant price. Pertinently, the amenities provided such as air conditioners are out of warranty.

C. Relief sought by the complainants:

24. The complainants have sought following relief(s):

(i) Direct the respondents to make the payment of compensation @20% p.a. on the amount already paid by the complainants to the respondents from the delay of 14 months i.e., from 02.06.2018 till 06.09.2019 or any other period this authority deems fit; and

(ii) Direct the respondents to deliver immediate possession of the apartment CD-C4-10-1002 in the project "The Corridors" located at sector- 67A, Gurgaon, Haryana along with all the promised amenities and facilities and to the satisfaction of the complainants, after adjusting the delay compensation.

25. 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.

26. The respondents have 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 buyer's agreement was executed between the complainants and the respondents 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 respondents have 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 an apartment vide their booking application form. The complainants agreed to be bound by the terms and conditions of the booking application form.

B. That based on the said application, respondent no.1 vide its allotment offer letter dated 07.08.2013 allotted to the complainants apartment no. CD-C4-10-1002 having tentative super area of 1312.5 sq. ft. for a sale consideration of Rs. 1,45,22,006.8/-. It was submitted that three copies of the apartment buyer's agreement were sent to the complainants by respondent no. 1 vide letter dated 25.03.2014. The apartment buyer's agreement was executed between the parties on 02.06.2014. The complainants agreed to be bound by the terms contained in the apartment buyer's agreement. It is pertinent to mention herein that when the

complainants had booked the unit with the respondents, 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 respondents raised payment demands from the complainants in accordance with the agreed terms and conditions of the allotment as well as of the payment plan and the complainants defaulted from the very inception. It was submitted that vide payment request letter dated 27.01.2015, the respondents had raised the payment demand towards the fourth instalment for the net payable amount of Rs. 19,16,386.40/-. However, the complete payment was not paid by the complainants and the remaining amount was adjusted in the next instalment demand.

D. That vide payment request letter dated 06.05.2015, respondent no. 1 raised the fifth instalment demand for the net payable amount of Rs.17,11,367.88. However, yet again the complainants failed to remit the whole amount and the outstanding amount was adjusted in the next instalment demand as arrears.

E. That vide payment request letter dated 25.06.2015, respondent no. 1 raised the seventh instalment

demand for the net payable amount of Rs.17,39,743.75. However, yet again the complainants failed to remit the whole amount and the outstanding amount was adjusted in the next instalment demand as arrears.

F. That vide payment request letter dated 20.07.2015, respondent no.1 raised the seventh instalment demand for the net payable amount of Rs. 14,50,864. Yet again, the complainants failed to pay the complete outstanding amount and the remaining due amount was adjusted in the next payment instalment as arrears.

G. That the possession of the unit was to be offered to the complainants in accordance with the agreed terms and conditions of the buyer's agreement. It was submitted that clause 13.3 of the buyer's agreement states that the respondents have 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 buyer's agreement.

H. That from the aforesaid terms of the buyer's 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.

I. 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 buyer's 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 respondents completed the construction of the tower in which the unit 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 respondents have even offered the possession of the unit to the complainants vide notice of possession dated 11.06.2019. The respondents vide the said notice of possession intimated to the complainants to remit the due amount and to complete the documentation formalities. However, despite reminders dated 06.08.2019, 21.09.2020 and 17.11.2020, the complainants have failed to do so and have instead filed the present baseless, false, and frivolous complaint.

J. That the complainants were bound to take the possession of the unit after making payment of the due amount and completing the documentation formalities as the holding charges are being accrued as per the terms of the apartment buyer's

agreement and the same is known to the complainants as is evident from a bare perusal of the notice of possession. However, the complainants have not done the needful till date.

K. Although the respondents have offered the possession of the apartment 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 respondents, 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 respondents 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 respondents 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.

L. The complainants are real estate investors who made the booking with the respondents with a view to earn quick profit in a short period. However, it appears that their calculations went wrong on account of severe slump in the real estate market and the complainants now wants to harass and pressurize the respondents to submit to their unreasonable demands on highly flimsy and baseless grounds. Such malafide tactics of the complainants cannot be allowed to succeed. The complainants furthermore are also liable to make payment towards the holding charges on account of the delay in taking over the possession as well as delayed payment interest as per the terms of the allotment even after a notice of possession has been issued by the respondents to the complainants.

27. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

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

E. I Territorial jurisdiction

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

E. II Subject matter jurisdiction

29. 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.***

F. Findings on the objections raised by the respondents.

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.

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

31. 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."*

32. 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 <u>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</u>. 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."

33. 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.

Objection of the respondents

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

34. The respondents 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".*

35. 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.

36. 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."

37. 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."*

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

G. Findings regarding relief sought by the complainants.

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

39. 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."*

40. Clause 13.3 of the apartment buyer's agreement (in short, the agreement) dated 02.06.2014, 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."*

41. The apartment buyer's 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 buyer's 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 buyer's 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 buyer's 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.

42. The authority has gone through the possession clause of the 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 this agreement and the complainant not being in default under any provisions of this agreements and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the apartment buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

43. The respondent promoters have 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 company i.e., the respondents/promoters.

44. Further, in the present case, it is submitted by the respondent promoters 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 respondents have not kept the reasonable balance between his own rights and the rights of the complainants/allottees. The respondents have acted in a pre-determined and preordained manner. The respondents have acted in a highly discriminatory and arbitrary manner. The unit in question was booked by the complainants on 22.03.2013 and the apartment buyer's agreement was executed between the respondents and the complainants on 02.06.2014. The date of approval of building plan was 23.07.2013. It will lead to a logical conclusion that that the

respondents would have certainly started the construction of the project. On a bare reading of the clause 13.3 of the agreement reproduced above, it becomes clear that the possession in the present case is linked to the "fulfilment of the preconditions" which is so 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 promoters are 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 apartment. It seems to be just a way to evade the liability towards the timely delivery of the subject apartment. 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 complainant.

45. 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 considered/observed 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."

46. 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 respondents 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 respondents submitted the corrected sets of drawings as per the NBC-2005 fire scheme only on 13.10.2014 (as contented by the respondents 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 builders failed to give any explanation for the inordinate delay in obtaining the fire NOC. So, the complainants/allottees should not bear the burden of mistakes/ laxity or the irresponsible behaviour of the developers/respondents and seeing the fact that the developers/respondents 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 respondents/ promoters 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.

47. **Admissibility of grace period:** The respondent promoters had proposed to hand over the possession of the apartment within 42 months from the date of sanction of building plan and/ or fulfilment of the preconditions imposed thereunder

which 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 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.

48. **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.*

49. 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."

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

51. 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;"

52. 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.

53. 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 buyer's agreement executed between the parties on 02.06.2014, the possession of the booked unit 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. The grace period of 180 days is not allowed in the present complaint for

the reasons mentioned above. 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 complainant is 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 respondents till offer of possession of the booked unit i.e., 11.06.2019 plus two months which comes out to be 11.08.2019 as per the proviso to section 18(1)(a) of the Act read with rules 15 of the rules.

H. Directions of the authority:-

54. 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 promoters as per the function entrusted to the authority under sec 34(f) of the Act:-

i. The respondents are 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., 11.06.2019 plus two months which comes out to be 11.08.2019.

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 respondents/promoters which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

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

55. Complaint stands disposed of.

56. 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