

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

Complaint no. : 4831 of 2020  
First date of hearing: 23.02.2021  
Date of decision : 19.08.2021

1. Mr. Anil Anand  
2. Mrs. Priya Anand  
**R/O:** - House no. 1009, Sector-16, Faridabad,  
Haryana-121002

**Complainants**

**Versus**

M/s Ansal Housing and Construction Ltd.  
**Registered office at:** - 15 UGF, Indraprakash,  
21, Barakhamba Road, New Delhi-110001

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri V.K. Goyal

**Member**  
**Member**

**APPEARANCE:**

Ms. Priyanka Agarwal  
Ms. Meena Hooda

Advocate for the Complainants  
Advocate for the Respondent

**ORDER**

1. The present complaint dated 23.12.2020 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 them.

**A. Unit and project related details**

2. The particulars of the project, the details of 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	Ansal Hub 83 Boulevard, Sector-83, Gurugram
2.	Project area	98.781 acres
3.	Nature of the project	Commercial project over an area 2.80 acres (part of 98.781 acres residential plotted colony)
4.	DTCP license no. and validity status	a) 71 of 2010 dated 15.09.2010 valid upto 14.09.2018 b) 113 of 2008 dated 01.06.2008
5.	Name of licensee	M/s Blossom Properties Pvt. Ltd., Kite Developers Pvt. Ltd. and 28 others
6.	RERA Registered/ not registered	Registered vide registration no. 09 of 2018 dated 08.01.2018
7.	Validity status	31.12.2020
8.	Date of building plan approval	25.07.2014
9.	Date of booking	12.04.2013 (Page no. 18 of the complaint)
10.	Unit no.	G-082

		(Page no. 24 of the complaint)
11.	Unit measuring	278 sq. ft. (Page no. 24 of the complaint)
12.	Date of execution of developer buyer agreement	03.02.2015 (Page no. 20 of the complaint)
13.	Due date of delivery of Possession (As per clause 30, the developer shall offer possession of the unit within 42 months from the date of execution of agreement or within 42 months from the date of obtaining all the required sanctions + 6 months grace period)	03.08.2018 (Calculated from the date of agreement since it was executed at a later date than approval of the building plan) <b>Note: - Grace period is not allowed.</b>
14.	Payment plan	Construction linked payment (Page no. 41 of the complaint)
15.	Total sale consideration	Rs. 40,05,110.66/- (Page no. 47 of the complaint)
16.	Amount received from the complainants	Rs. 33,58,585.13/- (Page no. 46 of the complaint)
17.	Occupation Certificate	Not obtained
18.	Offer of possession	Not offered
19.	Delay in handing over possession till the date of decision i.e., 19.08.2021	3 years 16 days

**B. Facts of the complaint**

3. That the complainants were subjected to unethical trade practice as well as of harassment, the developer buyer agreement clause of escalation cost, many hidden charges which will be forcedly imposed on buyer at the time of possession as tactics and practice used by builder guise of a biased, arbitrary and one sided. The developer buyer agreement executed between respondent and the complainants mentioned in developer's representations, DTCP given the license 71 of 2010 dated 15.09.2010.
4. That based on the promises and commitment made by the respondent, the complainants booked a shop admeasuring 278 sq. ft. bearing no. G-082 in the commercial project of the respondent namely, "Ansals HUB83 Boulevard", sector-83 Gurugram, Haryana. The initial booking amount of Rs. 7,00,000/- (including tax) was paid through cheque no. 988086 dated 12.04.2013.
5. That the respondent to dupe the complainants in its nefarious net even executed the developer buyer agreement on 03.02.2015. The respondent created a false belief that the project shall be completed in time bound manner and in the garb of this agreement persistently raised demands with threat of levying interest at a compound rate of 24% for any delay in payment. Due to persistent demands and threats of levying interest for payment delay they were able to extract huge amount of money from the complainants.
6. That it was submitted that as per clause 23 of the developer buyer agreement the buyer was charged very high interest rate i.e., 24% per annum, compounded quarterly.

Furthermore, according to clause 24 of agreement if buyer fails to pay due instalment within stipulated period, the respondent could cancel the agreement and forfeit the earnest money, without giving any notice to buyer which in itself is perverse in nature.

7. That the complainants further submitted that as per clause 34, the developer/respondent had very cleverly and specifically accepted a meagre liability to pay Rs. 5 per sq. ft./per month on the super area for the delay in offering of possession.
8. That the total cost of the said shop is Rs. 40,05,110.66/- and a sum of Rs. 33,58,585.13/- was paid by the complainants in time bound manner. This amount constituted more than 80% of the total sum taken from the complainants within 4 years. This amount was taken by the respondent through fraudulent means by erecting a bare structure within 2018. The respondent has taken from the complainants the total sum within 4 years. This amount was taken by the respondent through fraudulent means by erecting a bare structure within 2018. The respondent declined to complete the project after collecting money and there has been little progress in construction.
9. That as per section 19 (6) the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act) complainants have fulfilled their responsibility in regard to making the necessary payments in the manner and within the time specified in the said agreement. Therefore, the complainants herein are not in breach of any of its terms of the agreement.

10. That complainants booked a shop on 12.04.2013 (more than 7 years ago) and as per developer buyer agreement, respondent/ builder is liable to offer possession on before 03.08.2018 so far (clause no.30).
11. That the builder started construction work almost 7 years back and quickly erected a bare structure with the sole intention of taking money from buyers on construction-linked instalments. The respondent/builder is not completing the project and intending to delay the project. The 7 years long period has made adverse effect on construction quality of project.
12. That the respondent has indulged in all kinds of tricks and blatant illegality in taking money through booking and drafting of developer buyer agreement with a malicious and fraudulent intention and caused deliberate and intentional mental and physical harassment of the complainants.
13. That the complainants communicated with respondent and asked for delayed possession, but the respondent showed problem of financial crunch which created suspicion on builder's intentions.
14. That the complainants wrote several emails to respondent and requested for possession, but the respondent did not bother to respond till date.
15. That keeping in view the snail paced work at the construction site and half-hearted promises of the respondent, the chances of getting physical possession of the assured shop in near future seems bleak and that the same is evident of the irresponsible and haphazard attitude and conduct of the

respondent, consequently injuring the interest of the buyers including the complainants who have spent his entire hard earned savings and taken interest bearing loan in order to buy their home and stands at a crossroads to nowhere. The inconsistent and lethargic manner, in which the respondent conducted its business and their lack of commitment in completing the project on time, has caused the complainants great financial and emotional distress and loss.

16. That it was submitted that the cause of action to file the instant complaint has occurred within the jurisdiction of this authority as the unit which is the subject matter of this complaint is situated in sector 83, Gurugram which is within the jurisdiction of this authority.

**C. Relief sought by the complainants: -**

- 1) To direct the respondent to pay delayed interest on paid amount Rs. 33,58,585.13/- @24% till handing over of the physical possession.
  - 2) To direct the respondent to complete the project the immediately and hand over the possession of the shop with all basic amenities mentioned in developer buyer agreement.
  - 3) To direct the respondent to quash the one-sided clauses in developer buyer agreement.
  - 4) To direct the payment of GST amount by the respondent which is levied upon the complainants.
17. 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 present complaint is neither maintainable nor tenable by both law and facts. It was submitted that the present complaint is not maintainable before this authority. The complainants have filed the present complaint seeking refund and interest. It is respectfully submitted that complaints pertaining to refund, compensation and interest are to be decided by the adjudicating officer under Section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter be referred to as "the Act" for short) read with Rule 29 of the Haryana Real Estate (Regulation and Development) rules, 2017, (hereinafter be referred to as "the Rules") and not by this authority. The present complaint is liable to be dismissed on this ground alone.
- II. That even otherwise, the complainants have no locus-standi and cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the developer buyer agreement dated 03.02.2015, as shall be evident from the submissions made in the following paragraphs of the present reply.



- III. That the respondent was granted Licence No.71 of 2010 dated 15.09.2010, received from the Director General, Town and Country Planning, Chandigarh, Haryana (DGTCP) for developing its project.
- IV. That the complainants approached the respondent sometime in the year 2015 for the purchase of an independent unit in its upcoming residential project "Ansals HUB 83 Boulevard" (hereinafter "the project") situated in sector-83, village Tikampur, Gurugram. It was submitted that the complainants prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the complainants were fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondents to undertake development of the same. The complainants took an independent and informed decision to purchase the unit, un-influenced in any manner.
- V. That thereafter the complainants applied to respondent for provisional allotment of a unit in the project on 03.02.2015. The complainants, in pursuance of the aforesaid application form, were allotted an independent unit bearing No. G-082, Ansal HUB 83 Boulevard situated at sector-83, Gurugram. The complainants consciously and wilfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that the complainants shall remit every instalment on time as per the payment schedule. The respondent had no reason to suspect the *bona-fide* of the

complainants. The complainants further undertake to be bound by the terms and conditions of the application form as well as the developer buyer's agreement.

- VI. That it is further submitted that despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. It is also submitted that the construction work of the project is swing on full mode and the work will be completed within prescribed time period had there been no force majeure.
- VII. That without prejudice to the aforesaid and the rights of the respondents, it was submitted that the respondents would have handed over the possession to the complainants within time had there been no force majeure circumstances beyond the control of the respondents, there had been several circumstances which were absolutely beyond and out of control of the respondents such as orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble Punjab & Haryana High Court duly passed in Civil Writ Petition No.20032 of 2008 through which the shucking/extraction of water was banned which is the backbone of construction process, simultaneously orders at different dates passed by the Hon'ble National Green Tribunal restraining thereby the excavation work causing Air Quality Index being worse, maybe harmful to the public at large without admitting any liability. Apart from these the demonetization is also one of the main factors to delay in giving possession to the home buyers as demonetization caused abrupt stoppage of work in

many projects. The payments especially to workers to only by liquid cash. The sudden restriction on withdrawals led the respondent unable to cope with the labour pressure. However, the respondents are carrying its business in letter and spirit of the flat buyer's agreement as well as in compliance of other local bodies of Haryana Government as well as Govt. of Haryana or the Central Govt., as the case may be.

- VIII. That the respondent is carrying its business in letter and spirit of the developer buyer agreement but due to COVID 19 the lockdown was imposed throughout the country in March, 2020 which is badly affected the construction and consequently respondent was not able to handover the possession on time as the same was beyond the control of the respondent.
- IX. That, it is submitted that the complaint is not maintainable or tenable under the eyes of law, as the complainants have not approached this authority with clean hands and has not disclosed the true and material facts relates to this case of complaint. The complainants, thus, has approached the authority with unclean hands and has suppressed and concealed the material facts and proceedings which has direct bearing on the very maintainability of purported complaint and if there had been disclosure of these material facts and proceedings.
- X. That without admitting or acknowledging the truth or legality of the allegations advanced by the complainants and without prejudice to the contentions of the respondents, it

was respectfully submitted that the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. It was further submitted that merely because the Act applies to ongoing projects which registered with the authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainants seeking interest cannot be called in to aid in derogation and ignorance of the provisions of the developer buyer's agreement. It was further submitted that the interest for the alleged delay demanded by the complainants is beyond the scope of the buyer's agreement. The complainants cannot demand any interest or compensation beyond the terms and conditions incorporated in the buyer's agreement. The complainants cannot demand any interest or compensation beyond the terms and conditions incorporated in the buyer's agreement.

- XI. That, it is also worthwhile to mention here that the allegations having been levelled in this complaint are with regard to cheating and alluring which only can be decided by the Hon'ble Civil Court and in these scenarios this authority also lacks jurisdiction.
- XII. That, it was submitted that several allottees, including the complainants, has defaulted in timely remittance of the payment of instalment which was an essential, crucial and an indispensable requirement for conceptualisation and development of the project in question. Furthermore, when the proposed allottees defaulted in their payment as per

schedule agreed upon, the failure has a cascading effecting on the operation and the cost for proper execution of the project increase exponentially whereas enormous business losses befall upon the respondents. The respondents, despite default of several allottees has diligently and earnest pursued the development of the project in question and has constructed the project in question as expeditiously as possible. It was further submitted that the respondents had applied for registration with the authority of the said project by giving afresh date for offering of possession. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainants are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

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. Jurisdiction of the authority**

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

**E.1 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.

**E. II Subject matter jurisdiction**

19. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

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

- F1. Objection regarding jurisdiction of the complaint w.r.t the apartment buyer's 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 buyer's agreement was executed between the complainants and the respondent 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. Hence, in the light of above-mentioned



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

**F2. Objection regarding delay due to force majeure**

24. The respondent promoters have sought further extension for a period of 6 months 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 orders passed by the Hon'ble NGT including others. It was observed that due date of possession as per the agreement was 03.08.2018 wherein the event of demonetization occurred in November 2016. By this time, the major construction of the respondent's 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 respondent's project. Thus, the contentions raised by the respondent in this regard stand rejected. The other force majeure conditions mentioned by the respondent are of usual nature and the same could not have led to a delay of more than 3 years. Therefore, the respondent could be allowed to take advantage of its own wrongs/faults/deficiencies.

**F3. Objection regarding delayed payments**

25. Though an objection has been taken in the written reply that the complainants failed to make regular payments as and when demanded. So, it led to delay in completing the project.



The respondent had to arrange funds from outside for continuing the project. However, the plea advanced in this regard is devoid of merit. A perusal of statement of accounts shows otherwise wherein like other allottees, the complainants had paid more than 75% of the sale consideration. The payments made by the allottee does not match the stage and extent of construction of the project. So, this plea has been taken just to make out a ground for delay in completing the project and the same being one of the force majeure.

**G. Findings regarding relief sought by the complainants.**

**Delay possession charges:** To direct the respondent to give delayed possession interest to the complainants.

26. 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."***

27. Clause 30 of the flat buyer's agreement (in short, the agreement) dated 03.02.2015, provides for handing over of possession and is reproduced below:

**"30. Possession**

*"The developer shall offer possession of the unit any time, within a period of 42 months from date of execution of agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all the dues by Buyer and subject to force-majeure circumstances as described in clause 31. Further, there shall be a grace period of 6 months allowed to the Developer over and above the period of 42 months as above in offering the possession of the Unit."*

28. 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 residential, 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.
29. 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.
30. The respondent promoter has proposed to handover the possession of the subject apartment within a period of 42 months from the execution of the agreement or the date of approval of building plans and/or fulfilment of the

preconditions imposed thereunder plus 6 months' grace period for unforeseen delays beyond the reasonable control of the company i.e., the respondent/promoter.

31. Further, 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/allottees. The respondent has acted in a pre-determined and preordained manner. The respondent has acted in a highly discriminatory and arbitrary manner. The unit in question was booked by the complainants on 12.04.2013 and the developer buyer's agreement was executed between the respondent and the complainants on 03.02.2015. The date of approval of building plan was 25.07.2014. 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 30 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. 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 approval 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.

32. **Admissibility of grace period:** The respondent promoter has proposed to hand over the possession of the apartment within 42 months from the date of execution of the agreement or fulfilment of the preconditions imposed thereunder. The respondent promoter has sought further extension for a period of 6 months after the expiry of 42 months for unforeseen delays in respect of the said project. Further, the respondent has sought 6 months' grace period for offering possession of the unit and the respondent has failed to offer possession of the unit even after the lapse of grace period of 6 months and till date. The respondent raised the contention that the construction of the project was delayed due to *force majeure* which were beyond the control of the respondent promoter. Also, the allottees should not be allowed to suffer due to the fault of the respondent promoter. 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 allottee. 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 promoter has not assigned such compelling reasons as to why and how they shall be entitled for further extension of time 6 months in delivering the possession of the unit. Accordingly, this grace period of 6 months cannot be allowed to the promoter at this stage.

33. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charge and 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.*

34. 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.
35. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 19.08.2021 is @7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., @9.30%.
36. 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;"*

37. 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 delayed possession charges.

38. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 30 of the developer buyer's agreement executed between the parties on 03.02.2015, the possession of the subject apartment was to be delivered within stipulated time i.e., by 03.08.2018. As far as grace period is concerned, the same is not allowed as the delay was the result of the respondent's own mistakes and the respondent should be allowed to take advantage of his own wrong. Therefore, the due date of handing over possession was 03.08.2018 which is calculated from the date of execution of the agreement. The respondent has failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent/promoter to

fulfil its obligations and responsibilities as per the apartment buyer's agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the allottee is entitled for delayed possession charges @9.30% p.a. w.e.f. from due date of possession i.e., 03.08.2018 till handing over of possession after the date of receipt of valid occupation certificate as per section 18(1) of the Act read with rule 15 of the rules.

#### **H. Directions of the authority**

42. 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 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 complainant from due date of possession i.e., 03.08.2018 till handing over of possession after receipt of occupation certificate as per section 18(1) read with rule 15 of the rules.
- ii. The respondent is directed to pay arrears of interest within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10<sup>th</sup> of the subsequent month as per rule 16(2) of the rules.

- iii. The complainants are also directed to make payment/arrears if any due to the respondent at the equitable rate of interest i.e., 9.30% per annum.
- iv. The respondent shall not charge anything from the complainants which is not part of the buyer's agreement. The respondent is not entitled to charge holding charges from the complainants/allottees at any point of time even after being part of the buyer's agreement as per the law settled by the hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.
43. Complaint stands disposed of.
44. File be consigned to the registry

  
(Samir Kumar)  
Member

  
(Vijay Kumar Goyal)  
Member

Dated:19.08.2021

Judgement uploaded on 18.10.2021.