

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

Complaint no. : 3861 of 2020
First date of hearing : 29.01.2021
Date of decision : 19.08.2021

1.Mr. Madhur Jain
2.Mrs. Neha Jain
Both RR/o: 99, Uday Park, New Delhi- 110049. **Complainants**

Versus

1.M/s Ansal Housing Limited.
Address: Ansal Plaza, 2nd floor, Sector 1, near
Vaishali Metro Station, Vashali, Ghaziabad,
Uttar Pradesh 201010.
2.M/s Samyak Projects Pvt. Ltd.
Address: Ansal Plaza, 2nd floor, sector 1, near
Vaishali metro station, Vashali, Ghaziabad,
Uttar Pradesh 201010. **Respondents**

CORAM:

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

APPEARANCE:

Ms. Priyanka Agarwal Advocate for the complainants
Ms. Meena Hooda Advocate for the respondents

BRIEF

1. The present complaint dated 03.11.2020 has been filed by the complainants/allottees in Form CRA 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 to the allottee as per the agreement for sale executed inter-se them.

A. Project and unit 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 Heights, Sector-92, Gurugram-122001.
2.	Project area	10.563 acres
3.	Nature of the project	Residential project
4.	DTCP license no. and validity status	76 of 2010 dated 01.10.2010 Valid up to 30.09.2020
5.	Name of licensee	JSG Builders Pvt Ltd. & NCC Urban Infrastructure Ltd.
6.	HRERA registered/ not registered	Not registered
7.	Occupation certificate granted on	Not obtained
8.	Building plan approval	03.05.2012 (page 36 of reply)
9.	Unit no.	D-401 (page 22 of apartment buyer's agreement)
10.	Unit measuring	1565 sq. ft.
11.	Date of execution of buyer's agreement	03.04.2012 (Page 19 of complaint)
12.	Payment plan	Construction linked payment plan

		(Page 36 of complaint)
13.	Total consideration as per payment plan	Rs.52,19,980.25/- (As per customer ledger page 37 of complaint)
14.	Total amount paid by the complainants	Rs.48,39,664 /- as per customer ledger (Page 40 of complaint)
15.	Due date of delivery of possession as per clause 29 of the said agreement i.e., 36 months from the date of agreement or within 36 months from the date of obtaining all the required sanction 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 30. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 36 months as above in offering the possession of the unit.	20.04.2015 [Note: Grace period is not allowed] Since date of building plan approval is later than date of date of execution of agreement. Therefore, due date is calculated from date of building plan approval.
16.	Offer of possession to the complainants	Not offered
17.	Delay in handing over possession till date of decision i. e. 19.08.2021	6 years 3 months 30 days

B. Facts of the complaint

The complainants have made following submissions in the complaint:

3. That the complainants herein are law abiding citizen and consumer who have been cheated by the malpractices adopted by the respondents are stated to be a builder and is allegedly carrying out real estate development. Since many years, the complainants being interested in the project because it was a housing project, and the complainants need an own home for their family. They were subjected to unethical trade practice as well as subject of harassment, flat buyer agreement clause of escalation cost, many hidden charges which will forcedly imposed on buyer at the time of possession as tactics and practice used by builder guise of a biased, arbitrary and one sided. That the executed builder buyer agreement between respondents and complainants mentioned in developer's representations, DTCP given the licence 76 of 2010 to M/s JSG Builders Pvt. Limited this company was transferred his rights to Samayk Project Pvt. Ltd, M/s Ansal Housing & Construction Ltd. have legal right to collect money from allottees against the D-401, tower- D, "Ansal Heights, 92", Gurugram and have legal & valid to develop this project.
4. That the based-on promises and commitment made by the respondents, complainants booked a 3 BHK flat admeasuring 1565 sq. ft, along with one covered car parking in unit no D-401, tower- Din residential project "Ansal Heights 92", sector 92 Gurugram, Haryana. The initial booking amount was paid by first allottees on 27 June 2011. The unit no. D-401, tower D in residential project "Ansal Heights 92", Gurugram; initial allotted to Mr. Mahendra

Kumar Naredi & Mrs. Sunita Naredi and finally respondents endorsed to the said agreement in favour of complainants. By this endorsement complainants became legal allottee and purchaser of the said property.

5. The respondents to dupe the complainants in their nefarious net even executed flat buyer agreement signed between M/s Ansal Housing Ltd. and Mr. Mahendra Kumar Naredi & Mrs. Sunita Naredi on dated 03.04.2012 and finally respondents endorsed the said agreement in favour of complainants. By this endorsement complainants became legal allottee and purchaser of the said property. Respondents create a false belief that the project shall be completed in time bound manner and in the grab of this agreement persistently raised demands due to which they were able to extract huge amount of money from the complainants. The total cost of the said flat is Rs 52,19,980.25/- and out of this total amount paid Rs. 48,39,664/- by the complainants in time bound manner.
6. It is pertinent mentioned here that according to the statement the complainants paid a sum of Rs 48,39,664/- to the respondents. This builder was demanded more than 90% amount without doing appropriate work on the said project, which is illegal and arbitrary. As per section 19(6) the Real Estate (Regulation and Development) Act, 2016 complainants have fulfilled his 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.

7. The complainants were sanctioned home loan of rupees 42,00,000/- from DHFL bank which was taken for buying this flat, and EMI amount Rs 42,924/- created extra financial burden on complainants and still complainants are paying EMI of home loan. They have paid all the instalments timely and deposited Rs 48,39,664/- that respondents in an endeavour to extract money from allottees devised a payment plan under which respondents linked more than 35% amount of total paid against as a advance rest 60% amount linked with the construction of super structure only of the total sale consideration to the time lines, which is not depended or co-related to the finishing of flat and internal development of facilities of flat and internal development of facilities amenities and after taking the same respondents have not bothered to any development on the project till date as a whole project not more than 40% and in term of particular tower just built a super structure only. Extracted the huge amount and not spend the money in project is illegal and arbitrary and matter of investigation.
8. That complainants booked apartment dated 2011 and as per flat buyer agreement dated 2011 and as per flat buyer agreement builder liable to offer possession on before 03rd April 2015 so far. The builder was started construction work almost 9 years back still respondents want to more year to complete the project that 8-10-year long period make adverse effect on construction quality of project. As the delivery of the apartment was due on April 2015

which was prior to the coming into of force of the GST Act, 2016 i.e. 01.07.2017, it is submitted that the complainants are not liable to incur additional financial burden of GST due to the delay caused by the respondents. Therefore, the respondents should pay the GST on behalf of the complainants but just reversed builder collect the GST from complainants and enjoy the input credit as a bonus, this is also matter of investigation. The respondents have indulged in all kinds of tricks and blatant illegality in booking and drafting of flat buyer agreement with a malicious and fraudulent intention and caused deliberate and intentional huge mental and physical harassment of the complainants and his family and cruelly been dashed the savoured dreams, hopes and expectations of the complainants to the ground and the complainants are eminently justified in seeking delayed interest on paid amount along with immediate possession of property.

9. That the complainants communicate with respondents and asked for delayed possession respondents show problem of financial crunch other side builder extracted huge amount from complaints and given loan to other, and project development abundant create suspicion on builder intention. They have taken the loan for buying this unit and due to delay in possession they also lost exemption in income tax which is available only if builder given the possession within 5 years from the date of loan sanction.
10. It is submitted that the cause of action to file the instant complaints have occurred within the jurisdiction of this hon'ble authority as

the apartment which is the subject matter of this complaint is situated in sector 92, Gurugram which is within the jurisdiction of this hon'ble authority.

C. Relief sought by the complainants

11. The complainants have filed the present complaint for seeking following reliefs:
 - i. Pass an order for delay interest on paid amount of Rs 48,39,664/- from 3rd April 2015 along with pendent lite and future interest till actual possession thereon @24%.
 - ii. To restrain the respondents from raising any fresh demand and increasing the liability of the complainants.
 - iii. Direct the respondents to get the occupation certificate and immediately hand over the legal physical possession of unit in habitable condition with all amenities mentioned in brochure.
 - iv. Pass the order for forensic audit of builder because builder extracts more than 90% but project still incomplete more than 70%.
 - v. Direct the respondents to quash the one-sided clauses mention in BBA.
 - vi. Pass an order for payment of GST amount levied upon the complainants and taken the benefit of input credit by builder.
12. On the date of hearing, the authority explained to the respondents/promoters about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act and to plead guilty or not to plead guilty.

D. Reply by the respondents

13. The respondents have raised certain preliminary objections and has contested the present complaint on the following grounds:

- i. That the present complaint is neither maintainable nor tenable by both law and facts. It is submitted that the present complaint is not maintainable before this hon'ble authority. The complainants have filed the present complaint seeking interest and compensation. It is respectfully submitted that complaint pertaining to interest, compensation and refund are to be decided by the adjudicating officer under section 71 of the Real Estate (Regulation and Development) Act, 2016 read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules 2017 and not by this hon'ble 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 allotment letter/buyer's agreement dated 03.04.2012, which is evidentiary from the submissions made in the following paragraphs of the present reply.
- iii. That the relief sought in the complaint by the complainants are based on false and frivolous grounds and they are not entitled

to have any discretionary relief from this hon'ble authority as the person not coming with clean hands should be thrown out forthwith without going onto the merits of the case. However, the true facts of the case are that the land of the project is owned by M/s JSG Builder Pvt. Ltd., having its registered office at 297 A/4, Mehrauli, New Delhi which owns a part of land of 43 kanal 14 marla bearing rectangle no 81, killa no 3/2 min (2-10), 3/1/2 min (1-9), 7(7-7), 8/1 (6-8), 13/2 (7-0), 14/1 (4-0), 16/2 (3-0) 17 (8-0), 14/2 (4-0) and M/s NCC Urban Infrastructure Ltd., having its registered office at 41, Nagarjuna Hills, Hyderabad- 500082 which owns the remaining/balance area of 40 kanal and 16 Marla comprising in rectangle no 81, killa nos 6 (7-7) and 11 (8-0) failing in village Wazirabad of Gurugram. The landowners have under an agreement agreed to grant, convey and transfer all their rights, entitlements and interest in developments, construction and ownership of the total permissible FSI on the land aforesaid to M/s Samyak Projects Pvt. Ltd. having its registered office at 111, 1st floor, Antriksh Bhawan 22, Kasturba Gandhi Marg, New Delhi.

- iv. That since the Real Estate (Regulation of Development) Act, 2016 and the Haryana Real Estate (Regulation of Development) Rules 2017 came into force, the respondents have decided and have already been applied for the

registration of the project name Ansal Heights with the hon'ble authority.

- v. That the complainants approached the respondents sometime in the year 2012 for the purchase of an independent unit in its upcoming residential project "Ansal heights" situated in Sector 92, village Wazirabad, Gurugram. It is submitted that the complainants prior to approaching the respondents, 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, that the complainants took an independent and informed decision to purchase the unit, uninfluenced in any manner by the respondents.
- vi. Thereafter, the complainants through an application form applied to the respondents for provisional allotment of a unit in the project. In pursuance of the aforesaid application form, were allotted an independent unit bearing no. D-401, type of unit -3 +2T, sales area 1515 sq.ft. in the project namely, Ansal heights, situated at sector 92, village Wazirpur, 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 respondents that the complainants shall remit every instalment on time as per the payment schedule. The respondents have no reason to

suspect the bonafide of the complainants. The complainants further undertake to be bound by the terms and conditions of the application form and the flat buyer's agreement as well. It is further submitted that despite there being a number of defaulters in the project, the respondents 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 is 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 hon'ble National Green Tribunal thereby restraining the excavation work causing Air Quality Index being worst, may be 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. This sudden restriction on withdrawals led the respondents unable to cope with the labour pressure. However, the respondents are carrying its business in letter and spirit of the builder-buyer agreement as well as compliance of other local bodies of Haryana government.

- viii. It is submitted that the complaint is not maintainable and tenable under the eyes of law, as the complainants have not approached the hon'ble authority with clean hands and not disclosed the true and material facts relates to this case of complaint. The complainants, thus, have approached the hon'ble authority with unclean hands and have 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 the question of entertaining the present complaint would have not arising in view of the case law titles as *S.P. Chengalvarya Naidu Vs. Jagan Nath reporter in 1994 (1) SCC page 1* in which the hon'ble Apex court of the land opined that non-disclosure of material facts and documents amounts to a fraud on not only the opposite party, but also upon the hon'ble authority and subsequently the same view was taken by even hon'ble National Commission in case title as *Tata*

Motors Vs. Baba Huzoor Maharaj Beaing RP no. 2562 of 2012 decided on 25.09.2013.

- ix. That without admitting or acknowledging the truth or legality of the allegation advance by the complainants and without prejudice to the contentions of the respondents, it is 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 is 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 or compensation cannot be called in to aid in derogation and ignorance of the provisions of the flat buyer's agreement. It is further submitted that the interest and compensation for the alleged delay demanded by the complainants are 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. However, in view of the law as laid down by the hon'ble Bombay High Court in case titled as *Neelkamal Realtors Suburban Pvt. Ltd. Vs. Union of India published in 2018(1) RCR(c) 298*, the liberty to the promoters/developers has been given u/s 4 to intimate fresh date of offer of possession while complying the provisions of

section 3 of the Act, 2016 as it was opined that the said Act, namely, RERA, is having prospective effect instead of retrospective. Para no 86 and 119 of the above said citation are very much relevant in this regard. It is 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.

- x. That without prejudice to the contentions of the respondents, it is submitted that the present complaint is barred by limitation. The complainants have alleged that due date of possession in respect of the said unit was 03.04.2015 and therefore, no cause of action is arisen in favour of the complainants on 03.04.2015, and thus, the present complaint is barred by law of limitation and the hon'ble authority lack of jurisdiction. It is also a conceded and admitted fact that the project related to the present complaint has not yet been registered with Real Estate Regulatory Authority and as such the hon'ble authority lacks jurisdiction to entertain the present complaint. 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 this scenario the hon'ble authority also lacks jurisdiction.

- xi. It is submitted that several allottees, including the complainants, have defaulted in timely remittance of 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 is further submitted that the respondents have 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 respondents. 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.
14. 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.

E. Jurisdiction of the authority

15. The preliminary objections raised by the respondents regarding jurisdiction of the authority to entertain the present complaint stands rejected. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

16. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana 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

The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoters as per provisions of section 11(4)(a) of the Act of 2016 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 respondents.

F.I Objection regarding jurisdiction of the complaint w.r.t. the apartment buyer's agreement executed prior to coming force of the Act.

17. 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.
18. 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 judgement of as per clause 2: sale consideration (page 31 of BBA) ***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. 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 conditions 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 respondents w.r.t. jurisdiction stands rejected.

F.2 Objection regarding delay due to force majeure

24. The respondents' promoters have sought further extension for a period of 6 months after the expiry of 36 months for offering the possession of the unit. The respondents 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 date of building plan approval is later than execution of agreement, the due date of possession is calculated from the approval of building plan i.e., 03.05.2012. Therefore, the due date of possession comes out to be 03.05.2015 wherein the event of demonetization occurred in November 2016. By this time, the 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 respondents in this regard stand rejected. The other force majeure conditions mentioned by the respondents are of usual nature and the same could not have led to a delay of more than 5 years. Therefore, the respondents 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 respondents have 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 have paid more than 90% 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 on the relief sought by the complainants

G.1 Delay possession charges

26. **Relief sought by the complainants:** Direct the respondents to pay interest at prescribed rate of interest on the amount paid to the respondents, from the promised date of delivery of the flat till the actual physical possession.

27. In the present complaint, the complainants intends to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....
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."

28. Clause (29) of the flat buyer agreement provides for time period for handing over of possession and is reproduced below:

The developer shall offer possession of the unit any time, within a period of 36 months from the date of execution of agreement or within 36 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 the above the period of 36 months as above in offering the possession of the unit.

29. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainants not being in default under any provisions of this agreement and 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 time period for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their 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. **Admissibility of grace period:** The promoter has proposed to handover the possession of the said unit within 36 months from the date of execution of agreement or fulfilment of the preconditions imposed thereunder. The respondents/promoters have sought further extension for a period of 6 months after the expiry of 36 months for unforeseen delays in respect of the said project. Further, the respondents have sought 6 months grace period for offering possession of the unit and the respondents have failed to offer of possession even after the lapse of grace period of 6 months and till date. The respondents raised the contention that the construction

of the project was delayed due to *force majeure* which were beyond the control of the respondents/promoters. Also, the allottees should not be allowed to suffer due to the fault of the respondents/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 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 respondents/promoter has not assigned such compelling reasons as to why and how it is entitled for further extension of time 6 months in offering the possession of the unit. Accordingly, this grace period of 6 months cannot be allowed to the promoters at this stage.

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

32. The legislature in its wisdom in the subordinate legislation under the 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.
33. 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%.
34. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate

of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(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;"*

35. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 9.30% by the respondents/promoters which is the same as is being granted to the complainants in case of delayed possession charges.
36. On consideration of the circumstances, the evidence and other record and submissions made by the complainants and the respondents and based on the findings of the authority regarding contravention as per provisions of Act, the authority is satisfied that the respondents are in contravention of the provisions of the Act. By virtue of clause 29 of the apartment buyer agreement, possession of the said unit was to be delivered within a period of 36 months from the date of execution of agreement or within 36 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever

is later. The building plan approval is later than execution of buyer agreement so, the due date is calculated from the building plan approval i.e., 03.05.2012. Therefore, the due date comes to be 03.05.2015. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 03.05.2015. The six months of grace period is not allowed as the respondents have not offered the possession till date.

37. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondents are established. As such the complainants are entitled to delay possession charges at prescribed rate of the interest @ 9.30 % p.a. w.e.f. 03.05.2015 till handing over of possession as per provisions of section 18(1) of the Act read with rule 15 of the rules.

H. Directions of the authority

38. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The 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. 20.04.2015 till handing over of possession after the date of receipt of valid occupation certificate as per section 18(1) read with rule 15.
- ii. The respondents are directed to pay arrears of interest accrued within 90 days from the date of order and thereafter monthly payment of interest till the offer of possession shall be paid on or before 10th of each subsequent month.
 - iii. The complainants are also directed to make payment/ arrears if any due to the respondents at the equitable rate of interest i. e. 9.30% per annum.
 - iv. The complainants/promoters shall not charge anything from the respondents/allottees which is not the part of the agreement, the complainants would not be entitled to claim holding charges at any point of time even after being part of agreement as per law settled by hon'ble Supreme Court in civil appeal no. 3864-3889/2020 decided on 14.12.2020.
39. Complaint stands disposed of.
40. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Samir Kumar)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 19.08.2021

Judgement uploaded on 18.10.2021.