

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

Complaint no. : 5733 of 2019
First date of hearing: 10.12.2019
Date of decision : 19.08.2021

Kedar Nath Gupta- HUF
R/O: - D-5, Seemant Vihar,
Kaushambi, Ghaziabad

Complainant

Versus

1. Ansal Housing Limited & Ors.
Regd. office: - 2nd Floor, Ansal Plaza,
Sector 1, Vaishali, Ghaziabad

2. Surrinder Lal Kapur
R/o: - 161 A/1 Western Avenue
Sainik Farms

3. Maharaj Kishen Trisal
R/o: - V-9/3, DLF City Phase-3

4. Kushagr Ansal
R/o: - 82, Jor Bagh, South Delhi

5. Ashok Khanna
R/o: - 765, Sector-8B, Chandigarh

6. Neha Ansal
R/o: - Villa B6 APJ,
Abdul Kalam Road, New Delhi

7. Ish Kripa Properties
R/o: - 168-169, Amar Colony,
Lajpat Nagar, New Delhi

Respondents

CORAM:

Shri Samir Kumar
Shri Vijay Kumar Goyal

Member
Member

APPEARANCE:

Shri. S. M Ansari
Ms. Meena Hooda

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 20.11.2019 has been filed by the complainant/allottee 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. Unit and Project related details:

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

S. No.	Heads	Information
1.	Name and location of the project	Estella, Sector 103, Gurugram
2.	Nature of the project	Residential group housing complex
3.	Project area	15.74 acres
4.	DTCP License	17 of 2011 dated 08.03.2011 valid up to 07.03.2015



5.	Name of the licensee	Rattan Singh, Biro Devi and 7 others
6.	RERA registered/ not registered	Not registered
7.	Date of execution of plot buyer's agreement	06.07.2012 (as per page 46 of the complaint)
8.	Building plan approval	28.11.2011
9.	Unit no.	K-0704
10.	Super Area	1330 sq. ft
11.	Payment plan	Construction linked payment plan
12.	Total consideration	Rs. 46,14,250/- (as per payment plan at page 66 of the complaint)
13.	Total amount paid by the complainant	Rs. 46,69,541/- (as per customer ledger dated 02.10.2019 annexed at page 85 of the complaint)
14.	Due date of delivery of possession <i>(As per clause 30 of the agreement: The Developer shall offer of 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 and above the</i>	06.07.2015 since date of agreement is later than date of building plan therefore due date is calculated from date of agreement (Grace period is not allowed)

	<i>period of 36 months as above in offering the possession of the unit.)</i>	
15.	Offer of possession	Not offered
16.	Occupation Certificate	Not received
17.	Delay in delivery of possession till the date of decision i.e 19.08.2021	6 years 1 month 13 days

B. Facts of the complaint

3. It is submitted that complainant came to know about the public offer, a project introduced by the respondents known as "ESTELLA" wherein the respondent no. 1 offered to sell residential apartments to be constructed at sector 103, Gurugram, Haryana with the extensive luring and eye catching advertisement. The complainant was lured by the sweet words and the extreme eye-catching presentation of the respondents and approached the builder to purchase a unit in the said project.
4. The complainant further submitted that respondent intimated that they are not left with any unit to allot it and offered to transfer a unit bearing Flat No. K-0704, Estella, Sector 103, Gurugram, Haryana in the said project which was initially allotted to M/s Jetways Travels Pvt. Ltd. The complainant being unaware of the intention of the respondent and to grab its hard-earned money gave his nod to initiate the transfer process of unit bearing Flat No. K-0704 from M/s Jetways Travels Pvt. Ltd. to the complainant after paying an amount of Rs. 12,41,965/- along with interest to M/s Jetways Travels Pvt. Ltd. against the payment made by M/s Jetways Travels Pvt. Ltd. between January 2011 to November 2011. Upon the instructions and directions of the respondents the complainant

filed an "APPLICATION FOR CHANGE IN RIGHT TO PURCHASE A PROPERTY" dated 28.05.2012 with the respondent no. 1 to transfer the unit in its name along with a transfer fee paid by it amounting to Rs, 16,600/-.

5. The complainant submitted that in accordance with the demand made by the respondent, it paid an amount of Rs.2,87,931/- as advance payment towards the sale consideration of the unit. Respondent No. 1 acknowledged the "APPLICATION FOR CHANGE IN RIGHT TO PURCHASE A PROPERTY" dated 28.05.2012 of the complainant and vide letter dated 19.06.2012 and transferred the unit in it's name. Thus, the rights of M/s Jetways Travels Pvt. Ltd. in the said unit were transferred in the favour of complainant. An apartment buyer's agreement dated 06.07.2012 was executed agreeing the total sale consideration of Rs.46,14,250/- which included BSP, PLC, EDC, IDC, car parking charges, club membership charges, administrative charges and taxes etc. Thus, the complainant herein became the owner/allottee of the unit.
6. The complainant submitted that the timely instalments as when demanded by the respondents were paid from time to time. Presently, the complainant has paid a sum of Rs. 46,10,865/- till date towards the sale consideration. As per the promise made to it at the time of entering into the agreement, the delivery of the apartment was to be given by 06.01.2016 inclusive of the grace period of 6 months.

7. The complainant submitted that though it contacted the respondents continuously for knowing the status of the project, but it was kept in dark by the respondents in order to conceal their deficiency in service and inordinate delay. On enquiry, the complainant learnt that the project construction is almost standstill and is not expected to be completed in near future.
8. In view of the above facts and reasons, the complainant herein has left with no other alternative but to approach this Hon'ble authority seeking suitable order to direct the respondents to handover the possession of the unit along with delayed possession charges along with interest @ 18% p.a, with effect from 06.01.2016 i.e. the due date of possession. Therefore, the present complaint is being filed by the complainant for kind consideration of this Hon'ble authority.

C. Relief sought by the complainant:

9. The complainant has sought following relief(s):
 - (i) Direct the respondents to handover the possession of the unit in time bound manner.
 - ii) Direct the respondent to pay interest @18% p.a. with effect from 06.01.2016 i.e. the due date of possession till the date of actual possession.
10. On the date of hearing, the authority explained to the respondent/promoters 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:

11. The respondent has filed and has contested the complaint on the following grounds.

- i. The complainant applied to the respondent for provisional allotment of a unit in the project. The complainant, in pursuance of the aforesaid application form, was allotted an independent unit bearing no. K-0704, sales area 1330.00 Sq. ft., in the project named ESTELLA situated at Sector-103, Gurugram.
- ii. It is further submitted that despite there being several 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 as given by the respondent to the authority.
- iii. That without prejudice to the aforesaid and the rights of the respondent, it is submitted that the respondent would have handed over the possession to the complainant within time had there been no force majeure circumstances beyond the control of the respondent, there had been several circumstances which were absolutely beyond and out of control of the respondent 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, which 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. The payments especially to workers to be made only by liquid cash. The sudden restriction on withdrawals led the respondent unable to cope with the labour pressure. However, the respondent is carrying its business in letter and spirit of the builder buyer agreement as well as in compliance of other local bodies of Haryana Government.

- iv. It is submitted that in view of clause-30 the respondent was required to handover the possession within a period of 42 months from the 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. Further, it is also clearly mentioned in clause-30 of the agreement that there shall be a grace period of 6 months allowed to the developers over and above the period of 42 months as above in offering the possession of unit. It is submitted that the respondent had applied for registration with the authority of the said project.

- v. That it is also a conceded and admitted fact that the project related to the present complaint has not yet been registered with RERA. That it is submitted that the proposed allottee defaulted in their payments' 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 respondent. The respondent, despite default of several allottee 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 respondent had applied for registration with the authority of the said project by giving afresh date for offering of possession, however, in this case the complainant has already been offered the possession by the respondent.
12. 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.
13. The authority on the basis of information and explanation and other submissions made and the documents filed by the complainant and the respondent is of considered view that there is no need of further hearing in the complaint.

E. Jurisdiction of the authority

14. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

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

The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per the 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 complainant 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.

15. 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

complainant and the respondent prior to the enactment of the Act and the provision of the said Act cannot be applied retrospectively.

16. 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.”

17. 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.”

18. 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

19. The respondent 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. 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 06.07.2015 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 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 5 years. Therefore, the respondent could be allowed to take advantage of its own wrongs/faults/deficiencies.

G. Findings regarding relief sought by the complainant.

Relief sought by the complainant: The respondent immediately be directed to grant the possession of unit along with compensation for the delay caused herein to the complaint.

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

Section 18: - Return of amount and compensation

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

21. As per clause 30 of the apartment buyer's agreement dated 06.07.2012, the possession of the subject unit was to be handed over by of 06.07.2015. 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 complainant 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 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. Clause 30 of the apartment buyer agreement (in short, agreement) provides for handover possession and is reproduced below:

Clause 30:

"The Developer shall offer of 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 and above the period of 36 months as above in offering the possession of the unit."

22. 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.

23. 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.

24. The respondent promoter has proposed to handover the possession of the subject apartment within a period of 36 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.
25. 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 complainant/allottee. 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 complainant and the apartment buyer's agreement was executed between the respondent and the complainant on 06.07.2012. The date of approval of building plan was 28.11.2011. 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 execution of agreement ought to be taken as the date for determining the due date of possession of the unit in question to the complainant.

26. **Admissibility of grace period:** The respondent promoter has proposed to hand over the possession of the apartment within 36 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 36 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 of possession 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 promoters at this stage.

27. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges 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.

28. 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.
29. 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%.
30. 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;”*

Therefore, interest on the delay payments from the complainant 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 complainant in case of delayed possession charges.

31. On consideration of the circumstances, the evidence and other record and submissions made by the complainant and the respondent and based on the findings of the authority regarding contravention as per provisions of Act, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 30 of the buyer's agreement executed between the parties on 06.07.2012, possession of the booked unit was to be delivered within a period of 36 months from the date of execution of the agreement, which comes out to be 06.07.2015. The six months of grace period is not allowed as the respondent have not offered the offer of possession till date.

Accordingly, the non-compliance of the mandate contained in section 11 (4)(a) of the Act on the part of the respondent is established. As such the complainant is entitled for delayed possession charges @9.30% p.a. w.e.f. from due date of possession i.e. 06.07.2015 till handing over of possession after the date of receipt of valid occupation certificate as per section 18(1) of the Act read with the rule 15 of the rules and section 19(10) of the Act of 2016.

H. Directions of the authority

32. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the authority under section 34(f) of the Act of 2016:

- i. The respondent shall pay 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. 06.07.2015 till handing over of possession after the date of receipt of valid occupation certificate as per section 18(1) of the Act read with the rule 15 of the rules and section 19(10) of the Act of 2016.
- ii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order and thereafter monthly payment of interest to be paid till offer of possession shall be paid on or before the 10th of each succeeding month.

- iii. The complainant is also directed to make payment /arrear 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 complainant which is not the part of buyer's agreement. The respondent is not entitled to charge holding charges from the complainant/allottee at any point of time even after being part of the builder buyer's agreement as per law settled by hon'ble supreme court in civil appeal nos. 3864-3889/2020 on 14.12.2020
33. Complaint stands disposed of.
34. File be consigned to registry.

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Vijay Kumar Goyal)

Member

Dated:19.08.2021

JUDGEMENT UPLOADED ON 21.10.2021.

