

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

Complaint no. : 2501 of 2021
First date of hearing: 20.07.2021
Date of decision : 26.08.2021

1. Krishan Kumar Garg
2. Renu Garg

Address: - E-042, the Icon DLF 5, Sector-43 near
American Express, Gurugram-122009

Complainants

Versus

Angle Infrastructure Private Limited

Address: - 406, 6th Floor, Elegance Tower, 8,
Jasola District Centre, Jasola, New Delhi-110025

Respondent

CORAM:

Shri Samir Kumar
Shri Vijay Kumar Goyal

Member
Member

APPEARANCE:

Ms. Manju Singh (Proxy Advocate for the Complainants
Counsel)

Ms. Lovina Robin Advocate for the Respondent

EX-PARTE ORDER

1. The present complaint dated 28.06.2021 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	"Florence Estate, Phase-1 (Tower-A, B and C)", Sector-70, Gurugram
2.	Project area	14.468 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no. and validity status	170 of 2008 dated 22.09.2008 valid upto 21.09.2020
5.	Name of licensee	M/s Angle Infrastructure Pvt. Ltd. and Central Govt Employees Welfare Housing Organisation
6.	RERA Registered/ not registered	Registered vide registration no. 287 of 2017 dated 10.10.2017
	Validity status	31.12.2018
7.	Date of commencement of construction	01.06.2013
8.	Date of building plan approval	12.08.2013 (As per project details)
9.	Date of allotment	29.04.2013 (Page no. 31 of the complaint)
10.	Unit no.	2102, 20 th floor, tower B



		(Page no. 36 of the complaint)
11.	Unit measuring	1865 sq. ft. (Page no. 36 of the complaint)
12.	Date of execution of apartment buyer agreement	17.06.2013 (Page no. 33 of the complaint)
13.	Due date of delivery of Possession (As per clause 3.1, 4 years from the commencement of construction or date of execution of agreement or date of necessary approvals + 9 months grace period)	12.08.2017 (Calculated from the date of approval of building plans as it is later than the date of commencement of construction or the execution of the agreement) Note: - Grace period of 9 months is not allowed.
14.	Payment plan	Construction linked payment plan (Page no. 59 of the complaint)
15.	Total sale consideration	Rs. 99,77,750/- (As alleged by the complainant on page no. 5 of the complaint)
16.	Amount received from the complainants	Rs. 94,28,222/- (Page no. 63 of the complaint)
17.	Offer of possession (for fit outs)	17.03.2021 (Page no. 79 of the complaint) Note: - Not a valid offer of possession as occupation certificate is not obtained.
18.	Occupation Certificate	Not obtained



19.	Offer of possession	Not offered
20.	Delay in handing over possession till the date of decision i.e., 26.08.2021	4 years 14 days

B. Facts of the complaint

3. That the complainants, Krishan Kumar Garg & Renu Garg are law-abiding and peace-loving citizens and are residents of E - 042, the Icon, DLF - 5, sector - 43, Near American Express, Gurugram - 122009.
4. That the respondent, Angle Infrastructure Pvt. Ltd. is a company incorporated under the Companies Act, 1956 having registered office at 201, Elegance Tower, plot no.8, District Centre Jasola, New Delhi - 110025, corporate office at Krrish Group, unit no. 202, Elegance Tower, plot no. 8, Jasola District Centre, New Delhi - 110025 and the project in question is known as "Florence Estate", sector - 70, Gurugram.
5. That in October 2012, believing on representation and assurance of respondent, Ms. Isha Garg & Mr. Karan Garg (Original Allottee), booked an apartment bearing no. B - 2102 on 20th floor, admeasuring tentative area of 1865 sq. ft. situated at sector - 70, Gurugram in project "Florence Estate" marketed and developed by the respondent. The apartment was booked under a construction-linked payment plan for a total sale consideration of Rs.99,77,750/- (Ninety-Nine Lakh Seventy-Seven Thousand Seven Hundred Fifty) including BSP, IDC, EDC, etc.
6. That on 29.04.2013, the respondent issued a provisional allotment letter in name of Ms. Isha Garg & Mr. Karan Garg



(original allottees), conforming to the allotment of an apartment bearing no. B - 2102 on 20th floor, admeasuring tentative area of 1865 sq. ft.

7. That on 17.06.2013, a pre-printed, unilateral, arbitrary apartment buyer agreement was executed inter-se the respondent and Ms. Isha Garg & Mr. Karan Garg (Original Allottees). According to clause 3.1 of the apartment buyer agreement, the respondent has to give possession of the said apartment within 4 (Four) years (with a grace period of nine months) from the date of commencement of construction or execution of this agreement or date of obtaining all licenses, permissions or approvals for commencement of construction whichever is later. The construction was commenced before the execution of the apartment buyer agreement; therefore, the due date of possession was 17.06.2017. The grace period was for procurement of the occupation certificate, but the builder fails to procure the occupation certificate, therefore, the builder is not entitled to any grace period. It is settled law that a wrongdoer can't take advantage of his own wrong.
8. That on 17.01.2018, Ms. Isha Garg & Mr. Karan Garg (the original allottee) sent a letter to the respondent and stated "we now want the name(s) of our nominee(s) Mr. Krishan Kumar Garg & Ms. Renu Garg resident(s) of E-042, the Icon, DLF Phase - V, Sector - 43, Gurugram - 122009 to be substituted in place of our name(s). We have received from the nominee(s) Mr. Krishan Kumar Garg & Ms. Renu Garg the amount of Rs. 94,28,222/- (Rupees Ninety-Four Lakh, Twenty-Eight Thousand, Two Hundred and Twenty-Two) paid by us to you



towards the said allotted unit. After considering the request of Ms. Isha Garg & Mr. Karan Garg (original allottees) the respondent sent a substitution of name in the allotted unit letter substituted the name of the complainants against the name of original allottees and endorsed all the onward rights and liabilities in favor of the complainants.

9. That on 20.07.2018, the respondent sent a "demand intimation - on completion of internal finishing & flooring" and raised a demand of Rs. 5,11,275/- (Five Lakh Eleven Thousand Two Hundred Seventy-Five).
10. That on 28.07.2018, the complainants sent a grievance email to the respondent and requested the details regarding the project. Thereafter, many emails were sent by the Complainants to the respondent regarding the GST input credit and asking the due date of possession of the apartment, but the respondent did not pay any heed to the just and reasonable demands of the complainants and till now did not handover the possession of the apartment.
11. That on 09.08.2018, the complainants have paid Rs. 4,56,443/- (Four Lakh Fifty-Six Thousand Four Hundred Forty-Three) to the respondent through RTGS, and the respondent issued a receipt in favor of the complainants. Due to non-response from the respondent on GST input credit, the applicants had withheld the GST amount of Rs. 50,268/- (GST amount Rs. 54,832/- less TDS deposited Rs. 4564/-) and informed the same to respondents vide email dated 27.08.2018 and 23.10.2018. The complainants have paid Rs. 94,23,652.74/- (Ninety-Four Lakh Twenty-Three Thousand Six Hundred



Fifty-Two) and thereafter, paid Rs. 4,56,443/- (Four Lakh Fifty-Six Thousand Four Hundred Forty-Three) and deposited TDS of Rs. 4564.43/- (Four Thousand Five Hundred Sixty-Four) which comes to a total of Rs. 98,84,660/- (Ninety-Eight Lakh Eighty-Four Thousand Six Hundred Sixty) i.e., 99% of the total sale consideration.

12. That on 17.03.2021, the respondent sent an offer of possession for fit-out/possession after virtual completion. This is a generic letter without any name to whom it is addressed, without any apartment number or amount due/payable, etc, and also mentions the completion date of several activities yet to be completed as 31.05.2021. And asked to take possession of the apartment, but the complainants refused to take possession of the apartment before occupation certificate from the competent authority.
13. That since 2017, the complainants are regularly contacting the office bearers of the respondent, as well as sending emails to the respondent, and making efforts to get possession of the allotted apartment but all in vain. Despite several visits and requests by the complainants, the respondent did not give possession of the apartment. The complainants have never been able to understand/know the actual state of construction. Though, the towers seem to be built up, but there was no progress observed on finishing and landscaping work and amenities for a long time.
14. That the main grievance of the complainants in the present complaint is that despite the complainants paid more than 99% of the actual cost of the apartment and ready and willing



to pay the remaining amount (justified) (if any), the respondent party has failed to deliver the possession of the apartment on promised time and till date project is without amenities. Moreover, it was promised by the respondent at the time of receiving payment for the apartment that the possession of a fully constructed apartment and the developed project shall be handed over to the complainants as soon as construction completes.

15. That the facts and circumstances as enumerated above would lead to the only conclusion that there is a deficiency of service on the part of the respondent party and as such, he is liable to be punished and compensate the complainants.
16. That due to the acts of the above and the terms and conditions of the apartment buyer agreement, the complainants have been unnecessarily harassed mentally as well as financially, therefore the opposite party is liable to compensate the complainants on account of the aforesaid act of unfair trade practice.
17. That there are clear unfair trade practices and breach of contract and deficiency in the services of the respondent party and much more a smell of playing fraud with the complainants and others and is prima facie clear on the part of the respondent party which makes them liable to answer this authority.
18. That the cause of action for the present complaint arose in June 2013, when a unilateral, arbitrary, and ex-facie apartment buyer agreement was executed between the parties. The cause of action again arose in March 2018, when the respondent

party failed to hand over the possession of the apartment as per the buyer agreement. The cause of action again arose on various occasions, including on a) August 2019; b) Oct. 2020; c) December 2020, d) May 2021; and on many times till date, when the protests were lodged with the respondent about its failure to deliver the project and the assurances were given by it that the possession would be delivered by a certain time. The cause of action is alive and continuing and will continue to subsist till such time as this authority restrains the respondent by an order of injunction and/or passes the necessary orders.

19. That the complainants being an aggrieved person filing the present complaint under section 31 with the authority for violation/contravention of provisions of this act as mentioned in the preceding paragraph.
20. That the complainants do not want to withdraw from the project. The promoter has not fulfilled his obligation therefore as per obligations on the promoter under section 18(1) proviso, the promoter is obligated to pay the interest at the prescribed rate for every month of delay till the handing over of the possession.
21. That the present complaint is not for seeking compensation, without prejudice, complainants reserve the right to file a complaint to Adjudicating Officer for compensation.

C. Relief sought by the complainants: -

- 1) Direct the respondent to give possession of the apartment with all amenities within 6 months of the filing of the complaint.

- 2) Direct the respondent to give the delayed possession interest on prescribed rate till the actual date of possession.
 - 3) Refrain the respondent from giving effect to unfair clauses unilaterally incorporated in the apartment buyer agreement.
22. The authority issued a notice dated 20.07.2021 of the complaint to the respondent by speed post and also on the given email address at **florenceanglekrrish@gmail.com**. Despite service of notice, the respondent has preferred neither to put in appearance nor file reply to the complaint within the stipulated period. Accordingly, the authority is left with no other option but to decide the complaint ex-parte against the respondent.
23. 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.

D. Jurisdiction of the authority

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

D.1 Territorial jurisdiction

24. 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.

D. II Subject matter jurisdiction

25. 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.

E. 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 3.1 of the apartment buyer's agreement (in short, the agreement) dated 17.06.2013, provides for handing over of possession and is reproduced below:

"3.1. Possession

"Subject to Clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the Seller and any restraints/restrictions from any courts/authorities And subject to the Purchase(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and having complied with all provisions, formalities, documentation, etc. as prescribed by the Seller, whether under this Agreement or otherwise, from time to time, the Seller proposes to offer to hand over the possession of the Apartment to the Purchaser(s) within a period of 4 (four) years (with a grace period of 9 (nine) months from the date of commencement of construction or execution of this Agreement or date of obtaining all licenses, permissions or approvals for commencement of construction, whichever is later, subject to Force Majeure. The Purchaser(s) agrees and understands that the Seller shall be entitled to a grace period of 9 (nine) months, after the expiry of 4 (four) for offer to hand over the possession of the Agreement to the Purchaser....."

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/allottees 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-Real Estate (Regulation and



Development) Act, 2016 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 complainants 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 unit within a period of 4 years from commencement of construction or the execution of the agreement or the date of approval of building plans and/or fulfilment of the preconditions imposed thereunder plus 9 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 29.04.2013 and the apartment buyer's agreement was executed between the respondent and the complainants on 17.06.2013. The date of approval of building plan was 12.08.2013 and the date of commencement of construction was 01.06.2013. On a bare reading of the clause 3.1 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 preconditions, 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 unit. 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 plan being a later date than the date of execution or the date of commencement of construction is ought to be taken as the date for determining the due date of possession of the apartment in question to the complainants.

32. **Admissibility of grace period:** The respondent promoter has proposed to hand over the possession of the unit within 4 years from the date commencement of construction or from the execution of the agreement or fulfilment of the preconditions imposed thereunder. The respondent promoter has sought further extension for a period of 9 months after the expiry of 4 years for unforeseen delays in respect of the said project. Further, the respondent has sought 9 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 9 months and till date has failed to obtain the occupation certificate. 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 9 months in delivering the possession of the unit. Accordingly, this grace period of 9 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., 26.08.2021 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 3.1 of the apartment buyer's agreement executed between the parties on 17.06.2013, the possession of the subject unit was to be delivered within stipulated time i.e., by 12.08.2017. 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 12.08.2017 which is calculated from the date of approval of the building plan. The respondent has failed to handover possession of the subject unit 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., 12.08.2017 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.

F. Directions of the authority

39. 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 complainants from due date of possession i.e., 12.08.2017 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 10th 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 complainant/allottee 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.
40. Complaint stands disposed of.
41. File be consigned to the registry


(Samir Kumar)
Member


(Vijay Kumar Goyal)
Member

Dated:26.08.2021

Judgement uploaded on 26.10.2021.