

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

Complaint no. : 237 of 2021
First date of hearing: 24.02.2021
Date of decision : 26.08.2021

1. Mohan Chandra Joshi
2. Disha Joshi

Address: - 3601, Sanchar Vihar, Plot no. 15,
Sector-4, Dwarka, New Delhi-110078

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 Rubi Advocate for the Respondent

ORDER

1. The present complaint dated 21.01.2021 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	23.01.2013 (Page no. 36 of the complaint)
10.	Unit no.	1803, 17 th Floor, tower C

		(Page no. 44 of the complaint)
11.	Unit measuring	2125 sq. ft. (Page no. 44 of the complaint)
12.	Date of execution of apartment buyer agreement	03.01.2014 (Page no. 41 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)	03.01.2018 (Calculated from the date of execution of agreement as it is later than the date of commencement of construction or date of approval of building plans) Note: - Grace period of 9 months is not allowed.
14.	Payment plan	Construction linked payment plan (Page no. 67 of the complaint)
15.	Total sale consideration	Rs. 1,32,37,207.20/- (As per statement of account on page no. 85 of the complaint)
16.	Amount received from the complainants	Rs. 1,32,37,209/- (As per statement of account on page no. 85 of the complaint)
17.	Occupation Certificate	Not obtained
18.	Offer of possession	Not offered
19.	Delay in handing over possession till the date of decision i.e., 26.08.2021	3 years 7 months 23 days

B. Facts of the complaint



3. That the complainants namely, Mohan Chandra Joshi and Disha Joshi are law-abiding and peace-loving citizens and are residents of flat no. 3601, Sanchar Vihar, plot no. 15, sector - 4, Dwarka, New Delhi - 110078
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, and 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 the first week of August 2012, the complainants/allottees received a marketing call from a real estate agent (Gupta Promoters), who represented himself as authorized agent of the respondent and marketed residential project namely "Florence Estate" situated at sector - 70, Gurugram. The respondent asked to book a residential unit in the project "Florence Estate" which is "exclusive & soley for central government employees" situated at sector-70, Gurugram. The complainants visited the project along with family members and met there with the marketing staff/office bearers of the respondent. The respondent allured the complainants with proposed specifications and assured that possession of the unit will be delivered within 4 years from the date of booking. The respondent gave them a brochure and a pre-printed application form.
6. That, believing on representation and assurance of respondent, the complainants booked a 3BHK unit and paid



Rs. 10,00,000/- (Ten lakh) as booking amount vide cheque no. 224895, dated 21.08.2012 drawn on HDFC bank. The respondent allotted a unit bearing no. C - 2103 but thereafter on 03.01.2013, the respondent switched to unit no. C - 1803 on 17th floor tower C having a super area of 2125 sq. ft. in the project "Florence Estate", sector -70, Gurugram. The unit was booked for a total sale consideration of Rs. 1,32,18,750/-. (One Crore Thirty-Two Lakh Eighteen Thousand Seven Hundred Fifty) under construction link payment plan including basic price, EDC, IDC, IFMS, PLC, club membership & car parking.

7. That on 03.01.2013, the respondent issued a change in unit number and issued a letter to the complainants stating that "this is to bring to your kind notice that the revised sanctioned plan which has come from DTCP dated 12.08.2013 has the permission up to 19th floor for tower C. Due to the above-mentioned change and with your consent, we are changing your unit from C-2103 to C-1803 on 17th floor. From now you have no rights, title, and claims on unit no. C-2103".
8. That on 23.01.2013, the respondent issued a provisional allotment letter in name of the complainants, conforming to the allotment of unit no. C-2103 of tower no. - C for size admeasuring 2125 sq. ft.
9. That on 03.01.2014, after a long follow-up a pre-printed, unilateral, arbitrary apartment buyer's agreement was executed inter-se the respondent and the complainants. According to clause 3.1 of the apartment buyer's agreement, the respondent has to give possession of the said unit within a period of 4 (four) years with (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. It is germane to mention here that the construction was commenced on 01.06.2013 therefore the due date of possession was 01.06.2017.

10. That on 29.10.2017, the complainants sent a grievance email to the respondent and asked regarding the exact completion date and handover date of the unit and also alleged the delay in the handover of the unit. Thereafter, many emails were exchanged inter-se the parties regarding the completion of the unit, due date of possession and delay penalty charges, etc.
11. That after the booking the complainants continue to pay the demands as and when demanded by the respondent. As per the statement of account issued by the respondent, the complainants have paid Rs. 1,32,37,207/- (One Crore Thirty-Two Lakh Thirty-Seven Thousand Two Hundred Seven). It is pertinent to mention here that the complainants have paid more than 100% of the total sale consideration.
12. That on 22.02.2020, the complainants sent a grievance email and asked regarding the status of the construction and about other issues. Thereafter, on 31.12.2020, the complainants sent another email to the respondent and asked about the status of construction, the due date of possession, status of other amenities & delay penalty interest. It is pertinent to mention here that the complainants sent many reminder emails to the respondent regarding the due date of possession of the



- unit/handover of the unit but even after 8 years from booking the unit is still not ready for possession.
13. That, since 2017 the complainants are regularly visiting the office of the respondent party, as well as on the construction site, and making efforts to get possession of the allotted unit but all in vain. Despite several visits and requests by the complainants, the respondent did not give possession of the unit. The complainants have never been able to understand/know the actual state of construction. Though, the towers seem to be built up, and there was no progress was observed on finishing and landscaping work and amenities for a long time.
 14. That it is highly germane to mention here that the respondent has made use of his highly dominant position to harass the complainants, the complainants have purchased the unit with the intention that after purchase, they would be able to stay in a safe and better environment. Moreover, it was again promised by the respondent party at the time of receiving payment for the unit that the possession of fully constructed unit would be handed over to the complainants as soon as the construction completes i.e., on or before 01.06.2017, as per clause no. 3.1 of the apartment buyer agreement, despite paying more than 100% of the consideration amount of Rs. 1,32,37,207/- (One Crore Thirty-Two Lakh Thirty-Seven Thousand Two Hundred Seven), the respondent has failed to offer possession on time.
 15. That the main grievance of the complainants in the present complaint is that despite the complainants have paid more

than 100% of the actual cost of unit and ready and willing to pay the remaining amount (justified) (if any), the respondent party has failed to deliver the possession of unit on promised time and till date project is without amenities.

16. 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.
17. 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.
18. That there are a clear unfair trade practice 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 which makes them liable to answer this authority.
19. That the cause of action for the present complaint arose in June 2017, when the respondent failed to handover the possession of the unit as per the apartment buyer agreement. The cause of action again arose on various occasions, including on a) March 2018; b) December 2018; c) January 2019, d) May 2019; e) April 2020, f) December 2020 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.

20. That the complainants being an aggrieved person filing the present complaint under section 31 with this authority for violation/contravention of provisions of this Act as mentioned in the preceding paragraph.
21. 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 the possession.
22. 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 unit with all amenities.
- 2) Direct the respondent to give the delayed possession interest on the amount paid by the complainants/allottees, at the prescribed rate from the due date of possession to till the actual possession of the unit is handed over as per the proviso to section 18(l) of the Real Estate Regulation and Development) Act, 2016.
- 3) Direct the respondent to provide area calculation (carpet area, loading, and super area).

- 4) Refrain the respondent from giving effect to unfair clauses unilaterally incorporated in the apartment buyer agreement.
23. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

26. The respondent has contested the complaint on the following grounds:
- I. That at the very outset, it is stated that each and every averment and statement made by the complainants in the complaint under reply, is to be deemed as denied by the respondent as false and lacking in proof, unless the same is specifically admitted herein under.
 - II. That the respondent is a company incorporated under the provisions of the Companies Act, 1956 and existing under the provisions of the Companies Act, 2013 having its registered office at 201, Elegance tower, plot no. 8, District Centre, New Delhi-110025.
 - III. That initially one M/s. Capital Builders was the absolute owner of the land situated at village Fazilpur, Jharsa and District Gurgaon, Haryana.
 - IV. That, the said M/s. Capital Builders executed certain irrevocable development rights agreement in favour of the respondent and granted, conveyed and transferred all development, construction, marketing, sales and other rights and entitlements to develop, construct, market and sell

- groups housing project on the said project land to the respondent.
- V. That, accordingly, the respondent proposed to develop a group housing project namely "Florence Estate" on the said project land.
- VI. That initially Directorate of Town and Country Planning, Haryana, (hereinafter referred to as "DTCP") issued a license bearing no. 170 of 2008 dated 22.09.2008 to M/s. Capital Builders for development of the said project on the said project land. M/s. Capital Builders subsequently transferred the license to the respondent. The DTCP sanctioned the site plan on 14.05.2013.
- VII. That the State Environment Impact Assessment Authority, Haryana issued the environment clearance certificate to the respondent.
- VIII. That after conducting his own independent due diligence and being fully satisfied with the particulars of the said project, the complainants voluntarily approached and applied to the respondent and expressed his interest in purchasing an apartment in the said project being developed by the respondent. As per his request, the respondent agreed to allot a unit to the complainants in the said project.
- IX. That an apartment buyer's agreement dated 03.01.2014 was executed between the complainants and the respondent. The complainants entered into the said agreement voluntarily.
- X. That, the respondent allotted unit no. 1803, tower C on 17th floor admeasuring 2125 sq. ft. (197.41 sq. mtr.) saleable area

- in the said project for a total basic sale consideration of Rs.1,19,00,000.00 (Rupees One Crore Nineteen Lakhs only).
- XI. That in terms of the clause 3.1 of the agreement, the respondent is to hand over the actual, vacant, physical possession of the unit to the complainants 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 the agreement or date of obtaining all licenses, permissions or approvals for commencement of construction whichever is later i.e., on or before 03.10.2018 subject to force majeure.
- XII. That in terms of the clause 3.5 of the agreement, the complainants agreed that, if the respondent fails to complete the construction of the unit within the stipulated period as mentioned in the agreement due to force majeure circumstances or for other reasons as stated in the agreement or some other circumstances beyond the control of the respondent then the complainants agreed that the respondent shall be entitled to reasonable extension of time for completion of construction of the said project and the delivery of possession of the unit to the complainants.
- XIII. That, the complainants made a total payment of Rs.1,32,10,944.00/- (Rupees One Crore Thirty-Two Lakh Ten Thousand Nine Hundred and Forty-Four only) to the respondent till date.
- XIV. That in terms of clause 12.1 of the agreement, timely payment of all the amounts is the essence of the agreement. Further, if the complainants fail to make the payment in terms of the agreement, the respondent has the right to

- cancel /terminate the agreement and forfeit the booking amount.
- XV. That it is stated that the complainants always failed to make the payments as per the payment plan i.e., annexure D of the agreement to the respondent.
- XVI. That it is stated that sometime in the year 2013, one Mr. Ballu Ram filed a writ petition (CWP No. 17737 of 2013) before the hon'ble High Court of Punjab and Haryana challenging grant of license No. 170 of 2008 issued by DTCP. The hon'ble High Court vide order dated 16.08.2013 directed the parties maintain status-quo with regard to transfer and construction in respect to the said Project of the respondent herein.
- XVII. That it is stated that in view of the aforesaid order passed by the hon'ble High Court of Punjab and Haryana, the respondent failed to continue with any kind of construction at the project site. all the construction work at the project site came to stand still.
- XVIII. That it is stated that the hon'ble High Court of Punjab and Haryana vide order dated 17.11.2014 dismissed the said writ petition.
- XIX. That it is stated that in view of the said order of the hon'ble High Court of Punjab and Haryana dated 16.08.2013, the Respondent was forced to keep in hold all the construction work at the project site. The respondent was unable to do any kind of construction work at the project site for about fifteen (15) months.



- XX. That it is further pertinent to bring to the notice of this authority that certain disputes arose between M/s. Capital Builders and the respondent. In an appeal [EFA-15-2015 (O&M)] filed by M/s. Capital Builders against the respondent before the hon'ble High Court of Punjab and Haryana, the hon'ble High Court vide order dated 10.09.2015 restrained the respondent herein from creating any third-party interest in respect unsold unit. The hon'ble High Court vide order dated 08.05.2019 modified the earlier order dated 10.09.2015 and excluded 60 un-sold flats from the ambit of the stay order.
- XXI. That it is stated that the respondent is in the process of completing and developing the said project and will deliver the possession of the unit to the complainants within a short period of time. It is further stated that this authority has granted registration of the said project under the Real Estate (Regulation and Development) Act, 2016. The respondent has also applied for extension of validity of registration of the project with the requisite fees. The development of the project is in an advance stage.
- XXII. That it is stated that in terms of clause 3.5 of the agreement, if the respondent fails to complete the construction of the unit within the period as mentioned in the agreement due to force majeure circumstances or for other reasons as stated in the agreement or some other circumstances beyond the control of the respondent, then the respondent is entitled to reasonable extension of time for completion of construction of the project and delivery of the possession of the unit to the



complainants. Further, as per the said clause 3.5 of the agreement, the complainants are not entitled to any interest or refund of the amount paid the complainants to the respondent.

XXIII. That it is most respectfully submitted that in view of the circumstances beyond its control, the respondent was unable to complete the construction and deliver the possession of the unit to the complainants within the stipulated period of time. It is most respectfully submitted that in view of the aforementioned facts and force majeure circumstances, there is no failure on the part of the respondent in completing the construction and delivering the possession of the unit to the complainants and further there is no deficiency of service on the part of the respondent, as such the present complaint is not maintainable. The respondent is not liable to pay any amounts to the complainants.

XXIV. That it is most respectfully submitted that the present complaint along with the reliefs sought for is not maintainable before this hon'ble authority as this authority does not have the jurisdiction to award any reliefs prayed for in the complaints. As such the present complaint is not maintainable.

XXV. That it is most respectfully submitted that in view of the aforementioned facts and circumstances, the present Complaint is liable to be dismissed with an exemplary cost.

20. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the

complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Written arguments submitted by the complainants

The complainants submitted the following written argument: -

- 1) That the complainants/allottees have filed the present complaint under section 31 of the Real Estate Regulation and Development Act, 2016, Read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017, and the regulation thereunder against the respondent.
- 2) That the complainants are an allottee/owner of a flat bearing No. C - 1803 on 17th floor tower C having a super area of 2125 sq. ft. Earlier the complainants booked a flat bearing no.C-2103 in the project "Florence Estate" situated at sector - 70, Gurugram on 21.08.2012 under the construction linked Plan for a sale consideration of Rs. 1,32,18,750/- (One Crore Thirty-Two Lakh Eighteen Thousand Seven Hundred Fifty), thereafter the complainants switched to unit no. C - 1803 on 17th floor tower C having a super area of 2125 sq. ft., in the project.
- 3) That on 03.01.2013, the respondent issued a change in unit number letter to the complainants and stated that "this is to bring to your kind notice that the revised sanctioned plan which has come from DTCP dated 12.08.2013 has the permission up to 19th floor for tower C. Due to the above-mentioned change and with your consent, we are changing your unit from C-2103 to C-

1803 on the 17th floor. From now you have no rights, titles, and claims on Unit no. C-2103".

- 4) That on 23.01.2014, a pre-printed, arbitrary, one-sided, and ex-facie apartment buyer agreement was executed inter-se the complainants and respondent. As per clause no. 3.1 of apartment buyer agreement, the respondent has to give the possession of unit within 4 (four) years with (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. It is germane to mention here that the construction commenced on 01.06.2013 (refer to the statement of account on page no. 87 of the complaint "01.06.2013 - On commencement Excavation"), therefore the due date of possession was 01.06.2017.
- 5) That it is pertinent to mention here that the complainants kept raising the demand on 07.12.2013, 19.03.2015, 22.06.2015, 24.09.2015, 01.02.2016, 01.11.2016, 15.03.2017 and 17.03.2018.
- 6) That the respondent alleged that as per the order of the hon'ble High Court of Punjab and Haryana, vide order dated 16.08.2013, there was a stay on construction of the project. In contrast, the respondent raised a demand on 07.12.2013 "on commencement of basement slab" and said demand was paid by the complainants. It is settled law that a wrongdoer cannot take advantage of his own wrong. It is further pertinent to mention here that said

writ petition was dismissed by hon'ble High Court on 17.11.2014. Moreover, the dispute was between the partners (the license holders).

- 7) That on 29.10.2017, the complainants sent a grievance email to the respondent and asked regarding the exact completion date and handover date of the unit and also alleged the delay in the handover of the unit. Thereafter, many emails were exchanged between both the parties regarding the completion of the unit, due date of possession and delay penalty charges, etc.
- 8) That as per the statement of account issued by the respondent the complainants have paid Rs. 1,32,37,207/- (One Crore Thirty-Two Lakh Thirty-Seven Thousand Two Hundred Seven). It is pertinent to mention here that the complainants have paid more than 100% of the total sale consideration.
- 9) That on 22.02.2020, the complainants sent a grievance email and asked regarding the status of the construction and about other issues. Thereafter, on 31.12.2020, the complainants sent another email to the respondent and asked about the status of construction, the due date of possession, the status of other amenities & delay penalty interest. It is pertinent to mention here that the complainants sent many reminder emails to the respondent regarding the due date of possession of the unit/handover of the unit but even after 8 years from booking the unit is still not ready for possession.



- 10) That, since 2017 the complainants are regularly visiting the office of the respondent, as well as on the construction site, and making efforts to get possession of allotted flat but all in vain. Despite several visits and requests by the complainants, the respondent did not give possession of the unit. The complainants have never been able to understand the actual state of construction. Though, the towers seem to be built up, there was no progress observed on finishing and landscaping work and amenities for a long time.
- 11) That it is highly germane to mention here that the respondent has made use of his highly dominant position to harass the complainants, the complainants have purchased the unit with the intention that after purchase, they would be able to stay in a safe and better environment. Moreover, it was again promised by the respondent party at the time of receiving payment for the unit that the possession of fully constructed flat would be handed over to the complainants as soon as the construction completes i.e., on or before 01.06.2017, as per clause no. 3.1 of the apartment buyer agreement, despite paying more than 100% of the consideration amount of Rs.1,32,37,2077/- (One Crore Thirty Two Lakh Thirty-Seven Thousand Two Hundred Seven) the respondent has failed to offer possession on time.
- 12) That the main grievance of the complainants in the present complaint is that despite the complainants have paid more than 100% of the actual cost of flat and ready

and willing to pay the remaining amount (justified) (if any), the respondent party has failed to deliver the possession of flat on promised time and till date project is without amenities.

13) 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.

14) 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.

15) That there is a clear unfair trade practice 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 which makes them liable to answer this authority.

16) That there is a clear unfair trade practice 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 which makes them liable to answer this authority.

F. Jurisdiction of the authority

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

F. I Territorial jurisdiction

21. 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.

F. II Subject matter jurisdiction

22. 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.

G. Findings on the objections raised by the respondent.

G1. Objection regarding delayed payments

23. Though an objection has been taken in the written reply that the complainants failed to make regular payments as and when demanded. So, it led to delay in completing the project. The respondent had to arrange funds from outside for continuing the project. However, the plea advanced in this regard is devoid of merit. A perusal of statement of accounts shows otherwise wherein like other allottees, the

complainants had paid substantial amount of the sale consideration. Even there is nothing on record to show the stage and extent of construction in which the unit of the complainants is located. Though, some blurred photographs were filed by the respondent builder of the project but the same are not clear. So, no conclusive conclusion from the same be drawn with regard to the stage of the construction of the project. Moreover, despite receiving substantial amount of total sale consideration, the respondent has failed to obtain the occupation certificate and offer the possession of the unit to the complainants. The payments made by the allottees do 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.

H. Findings regarding relief sought by the complainants.

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

24. 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."

25. Clause 3.1 of the apartment buyer's agreement (in short, the agreement) dated 03.01.2014, 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....."

26. The apartment buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builders/promoters and buyers/allottee are protected candidly. The apartment buyer's agreement lays down the terms that govern the sale of different kinds of properties like residentials, commercials etc. between the buyer and builder. It is in the interest of both the parties to have a well-drafted apartment buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate



event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the right of the buyer/allottee in case of delay in possession of the unit. In pre-RERA period it was a general practice among the promoters/developers to invariably draft the terms of the apartment buyer's agreement in a manner that benefited only the promoters/developers. It had arbitrary, unilateral, and unclear clauses that either blatantly favoured the promoters/developers or gave them the benefit of doubt because of the total absence of clarity over the matter.

27. 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.

28. 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.
29. 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 23.01.2013 and the apartment buyer's agreement was executed between the respondent and the complainants on 03.01.2014. The date of approval of building plan was 12.08.2013 and the date of commencement of construction was 01.06.2013. Therefore, the respondent commenced the construction prior to the execution of the agreement. 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 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 unit. It seems to be just a way to evade the liability towards the timely delivery of the subject unit. 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 the agreement being the later date than date of commencement of construction is ought to be taken as the date for determining the due date of possession of the unit in question to the complainants.

30. **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. 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 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.

31. **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.

32. 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.
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., 26.08.2021 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(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;"

35. 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.
36. 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 03.01.2014, the possession of the subject unit was to be delivered within stipulated time i.e., by 03.01.2018. As far as grace period is concerned, the same is not allowed as the delay was the result of the respondent's own mistakes and the respondent should be allowed to take advantage of his own wrong. Therefore, the due date of handing over possession was 03.01.2018 which is calculated from the date of execution of agreement. 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., 03.01.2018 till handing over of possession after the date of receipt of valid occupation certificate as per section 18(1) of the Act read with rule 15 of the rules.

I. Directions of the authority

37. 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., 03.01.2018 till handing over of possession after receipt of occupation certificate as per section 18(1) read with rule 15 of the rules.
- ii. The respondent is directed to pay arrears of interest within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 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.
38. Complaint stands disposed of.
39. File be consigned to the registry.


(Samir Kumar)
Member


(Vijay Kumar Goyal)
Member

Dated:26.08.2021

Judgement uploaded on 26.10.2021.