

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

Complaint no. : 4337 of 2020
First date of hearing: 29.01.2021
Date of decision : 19.08.2021

1.Mr. Adil Moin Khan

2.Mrs. Eram Khan

Both RR/o: - 154, Nav Sansad Vihar, Sector 22, Dwarka,
New Delhi

Complainants

Versus

Ansal Housing & Construction Ltd.

Address: - 15 UGF, Indraprakash, 21Barakhamba Road,
New Delhi-110001

Respondent

CORAM:

Shri Samir Kumar

Shri Vijay Kumar Goyal

**Member
Member**

APPEARANCE:

Mr. Utkarsh Thapar

Ms. Meena Hooda

Advocate for the Complainants
Advocate for the Respondents

ORDER

The present complaint dated 03.12.2020 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations

made there under or to the allottee as per the agreement for sale executed inter-se them.

A. Unit and project related details

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

S.No.	Heads	Information
1.	Project name and location	Ansal Hub 83 Boulevard, Sector-83, Gurugram
2.	Project area	98.781 acres
3.	Nature of the project	Commercial project over an area 2.80 acres (part of 98.781 acres residential plotted colony)
4.	DTCP license no. and validity status	a) 71 of 2010 dated 15.09.2010 valid up to 14.09.2018 b) 113 of 2008 dated 01.06.2008
5.	Name of licensee	M/s Blossom Properties Pvt. Ltd., Kite Developers Pvt. Ltd. and 28 others
6.	RERA Registered/ not registered	Registered vide registration no. 09 of 2018 dated 08.01.2018
7.	Valid up to	31.12.2020
8.	Date of booking	17.03.2011 (As alleged by the complainants on page no. 04 of the complaint)
9.	Allotment of unit vide allotment cum buyer's agreement	17.09.2012 (As per page no. 32 of the complaint)
10.	Payment plan for project 1	Construction linked payment (As per page no. 48 of the complaint)
11.	Unit no. (in Project 1)	313

		(As per page no. 32 of the complaint)
12.	Unit measuring	417.28 sq. ft. (As per page no. 32 of the complaint)
13.	Changed area vide letter dated 15.10.2013	589 sq. ft. (As per page no. 78 of the complaint)
14.	Changed unit in project 2	T-015 (As per page no. 53 of the complaint)
15.	Changed area in project 2	539 sq. ft. (As per page no. 53 of the complaint)
16.	Date of execution of builder buyer's agreement for unit in project 2	16.09.2015 (As per page no. 49 of the complaint)
17.	Date of building plan approval	25.07.2014 (As per page no. 54 of reply)
18.	Due date of delivery of Possession (As per clause 30, the developer shall offer possession of the unit within 42 months from the date of execution of agreement or within 42 months from the date of obtaining all the required sanctions + 6 months grace period)	16.03.2019 (Calculated from the date of agreement being later) Note: - Grace period is not allowed.
19.	Payment plan for project 2	Construction linked payment (As per page no. 69 of the complaint)
20.	Basic selling price	Rs. 25,87,200/- (As per page no. 53 of the complaint)
21.	Amount received from the complainants	Rs. 22,07,531.71/- (As per receipts on page no. 72 to 77 of the complaint)

22.	Occupation Certificate	Not obtained
23.	Offer of possession	Not offered
24.	Delay in handing over possession till the date of decision i.e., 19.08.2021	2 years 5 months 03 days

B. Facts of the complaint

2. That the respondent company has caused immense financial and mental agony to the complainants because of its malicious conduct. Ever since the inception, the respondent company has not lived up to any of its promises and has not even abided by the terms of the allotment letter and the builder buyer agreement. Whereas, contrary to the mala fide conduct of the respondent company, the complainants since the very beginning have complied with all the terms of the allotment letter and the builder buyer agreement.
3. That it has been more than 9 years since the complainants have been associated with the respondent company, however, owing to the unprofessional conduct of the respondent company, till date the complainants do not have the possession of the unit and their hard earned money is stuck in a dead-lock.
4. That in 2011, while searching for an office space in Gurgaon, the complainants, through their broker came to know about the respondent company's project, Ansal Hub 83 (hereinafter referred to as "Project 1"). It

is pertinent to mention that the respondent company advertised project 1 and its amenities in a spectacular manner by stating that it has immaculately planned offices and state of the art facilities. Lured in by the rosy advertisement of the project 1, the complainants decided to enquire more about project 1 from the respondent company's officials. The respondent company's officials portrayed project 1 in a stellar manner to the complainants and assured them that they would be provided with the possession of the unit within 3 years from the execution of the allotment letter. The officials of the respondent company further assured the complainants that their money was in safe hands as the respondent company was a well-renowned company and had timely developed several projects. Lured in by the promises and rosy representations, the complainants decided to pay their hard-earned money in the respondent company's project 1.

5. That subsequently, the complainants submitted an application dated 17.03.2011 to the respondent company to book a unit in project 1 and also paid an amount of Rs. 2,62,290/- as the booking amount towards the purchase of the unit on 15.03.2011. The complainants were then allotted unit no. 313, having a sale area/super area of 417.28 sq. ft in project 1 of the respondent company. It is pertinent to mention that the complainants, timely made all the payments to the respondent company as and when the respondent company raised demand notices.

6. That vide demand letter (AHCL/243/1037) dated 20.06.2011, the respondent company directed the complainants to pay 35% of the purchase cost. The complainants paid 25% of the purchase cost, i.e., Rs. 4,71,790/- (Rs. 2,62,290+ Rs. 2,09,500/-) within one month of booking by 21.04.2011 and remaining 10%, i.e., Rs. 1,88,665/- was paid on 14.07.2011.
7. That after paying the requisite amounts as demanded by the respondent company, the complainants time and again requested the officials of the respondent company to share the allotment letter and subsequently execute it. However, the officials of the respondent company kept dilly dallying the complainants under one pretext or another and did the draft of the allotment letter for several months.
8. That it is significant to mention that the complainants had already paid the booking amount on 15.03.2011 and further paid 35% of the purchase cost by 14.07.2011. The complainants were always honest and trusting, however, it is quite evident that the respondent company had a mala fide intention since the very beginning as the allotment letter was executed on 17.09.2012 i.e. 18 months after the booking amount was paid by the complainants. As per the allotment letter, the possession of the unit was to be delivered to the complainants within a period of 36 months from the date of sanction of building plans or date of execution of allotment letter, whichever was later. In terms of the allotment letter, the possession of the unit was to be offered to the complainants by or before 17.09.2015.

9. That it is pertinent to mention that even after the execution of the allotment letter dated 17.09.2012, the construction of project 1 did not commenced. Concerned by the same, the complainants approached the officials of the respondent company time and again and asked them regarding the delay in the commencement of the construction, to which the respondent company told the complainants that they should not worry and guaranteed them that the construction would commence at the earliest and the possession of the unit would be offered within the stipulated time. To the shock of the complainants, the respondent company vide letter dated 15.10.2013 informed the complainants that the construction of project 1 had just commenced and further informed them that the layout plan had been revised and they had changed the complainants' unit and allotted a new unit of much bigger size. Furthermore, the revised basic cost of the unit (Rs. 25,96,694.85/-) was also informed to the complainants.
10. That the complainants were extremely perturbed to receive the said letter as it had been more than 2.5 years since the complainants had paid 35% of the purchase cost and no construction had taken place during that time. Further, whenever the complainants enquired about the status of construction, the respondent company always evaded answering the queries of the complainants under one pretext or another. To seek clarification, the complainant no. 1 sent an email dated 21.10.2013 to the officials of the respondent company enlisting his concerns, however, to the complainants

no.1's utter dismay the respondent company did not revert to the complainants no.1's email. Subsequently, the complainant no. 1 sent various reminder emails to the respondent company, however, there was nothing but complete silence from the respondent company. On 27.02.2014, after approximately after 4 months had passed, the respondent company reverted to the complainant no.1's emails stating that there were some unexpected changes in the floor plan of project 1 which the respondent company had to make in order to get the sanctioned approval for project 1.

11. That the complainants were extremely distressed when they found out the same, as they had already paid an amount of Rs. 6,60,455/- and after 2.7 years, the respondent company had not even obtained the requisite sanctions and the construction had barely commenced. When the complainants asked officials of the respondent company if they would get the possession of the unit on time, the officials of the respondent company told the complainants that there would be a delay in delivering the possession since the construction had just begun.
12. That the complainants were extremely perturbed as they had paid their hard-earned money in the respondent company's project 1 with the hope that they would be given the possession of the unit within 3 years however, the construction of the project had barely even commenced and already 2 years had passed since the allotment letter was executed with the complainants.

13. That since the project was not remotely close to being finished, the complainants discussed the same with their property dealer. Subsequently, the complainants' property dealer discussed the matter with Mr. Kushagar Ansal, and Mr. Kushagar Ansal suggested that the complainants shift their booking to another project as the complainants had already paid a substantial amount towards project 1, however, construction was not going to get completed in the near future. It was further assured to the complainants, that the project would be completed within 3-3.5 years. Since the complainants had no other option, under compulsion, they shifted their booking in another project namely, "Ansal Hub Boulevard." (hereinafter referred to as "Project 2")
14. That since the complainants were compelled to shift their booking to project 2, the complainants were given several options to choose their unit. The complainants were informed by the respondent company that the new unit would have the same area and price as the previous unit. On 13.03.2014, the complainants informed the new unit no. to the officials of the respondent company and asked them to complete the remaining formalities with respect to the change in the unit and building. However, the complainants received no reply for the same for several months, despite various reminders from the complainant no. 1.
15. That to the utter dismay of the complainants, vide letter dated 08.05.2014, the complainants were asked to pay Rs. 10,37,052.38/- including interest of

Rs. 85,373/-. The complainants were shocked as no such information was conveyed to them when they were compelled to shift their booking from project 1 to project 2. The complainants sought clarification for the same and sent an email dated 12.05.2014 enlisting their concerns and queries. On 28.05.2014, the respondent company sent an email and stated that due to the shifting of the project, the complainants were required to pay the increased amount as the price of the retail unit in project 2 was higher than project 1.

16. That it was informed to them earlier by the respondent company that they would shift the complainants' booking to another project at the same price and the complainants would not have to pay any additional amount for shifting their booking. In a perturbed state, the complainant no. 1 requested the officials of the respondent company to stay true to their promises and only then the respondent company agreed to waive off the interest amount of Rs. 85,373/-. Since, the complainants had already paid an amount of Rs. 6,60,455/- towards project 1, they agreed to pay the remaining amount for shifting their booking to project 2, with the hope that the respondent company would not cheat them and provide them with the possession of the unit on time.
17. That it is also pertinent to mention that the respondent company never shared the builder buyer agreement for project 2. The complainant no. 1 had to, time and again follow up with the respondent company, however, instead

of responding to the complainant no. 1's emails, and addressing to his queries, the respondent company issued unfounded demand notices to them even though, the builder buyer agreement was not executed.

18. That on 24.11.2014, the complainant no. 1 sent another email to the respondent company stating his concerns that it had been more than 6 months since his allotment had been shifted from project 1 to project 2, however, no allotment letter or agreement was executed. To further add to the complainants' misery, the respondent company was raising demand notices. In the said email, the complainant no. 1 also stated that he was ready to pay the requisite amount once the builder buyer agreement or the allotment letter was executed.
19. That even then, the respondent company did not share the draft of the BBA and only after multiple requests made by the complainant no.1, the BBA was shared with the complainants on 16.12.2014. On 20.01.2015, the complainant no. 1 sent an email to the respondent company's official wherein, he had stated that he had received the builder buyer agreement. However, there was some discrepancy in the cost. Further, the complainant no. 1 asked the respondent company to provide an update with respect to the construction so that he could pay the requisite amount and asked for the details for the electronic transfer. On 21.01.2015, the respondent company stated that the complainants have to pay Rs. 92,897.72/-.

20. That the complainant no. 1 was shocked and extremely distressed as it was agreed that the transfer to the new project would be done at the same price and that is why, the complainants agreed for transferring unit from project 1 to project 2. The complainant no. 1 vide email dated 22.01.2015 intimated his concerns to the officials of the respondent company and gave them an option of refunding the complainants' hard-earned money with an interest of 18%.
21. That the respondent company instead of taking responsibility of its mistakes and living up to its promises, explicitly told the complainant no. 1 vide email 22.01.2015 that the change in the price of the unit was not possible. On 27.01.2015, the complainant no. 1 responded to the respondent company's email and stated that the cost of the unit in project 2 was almost double of what the complainants had paid for the unit in project 1 and further requested the respondent company to settle the matter at the earliest without being unfair to either parties.
22. That for several months the respondent did not respond to the complainants and on 17.04.2015, the complainants received another demand notice. vide email dated 10.05.2015. The complainant no. 1 intimated the same to the respondent company and requested them to cancel the booking and refund the amount with interest in case the respondent company was unwilling to stay true to its promises which the officials of the respondent company made

to the complainants before the complainants were compelled to shift their booking from project 1 to project 2.

23. That the respondent company vide email dated 25.05.2015 requested the complainant no. 1 to reconsider his decision and when the complainant no. 1 told them that he wanted refund along with the interest, the respondent company sent another mail dated 18.07.2015 in which the respondent company quoted a revised rate of Rs. 4,800/- from Rs. 6,595/- per sq. ft. for the unit in project 2.
24. That the complainants felt relieved as they believed that the respondent company would deliver upon what was promised to the complainants. Subsequently, on 16.09.2015, a builder buyer agreement was executed between the complainants and the respondent company for the unit in project 2. As per the builder buyer agreement, the respondent company was to deliver possession of the unit within 42 months from the execution of the builder buyer agreement or 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later. Furthermore, a grace period of 6 months was allowed to the respondent company. In totality, the respondent company was to deliver possession by and before 16th September 2019, keeping the grace period in mind.
25. That on 01.11.2015, the complainants paid the additional amount of Rs. 10,56,880/- to the respondent company. That the complainants stayed true

to all their obligations arising out of the builder buyer agreement and timely paid the requisite amounts to the respondent company whenever any demand was raised.

26. That whenever the complainants requested the respondent company to provide them with an update with respect to the construction, the respondent company evaded the conversation under one pretext or another. However, after November 2017, the respondent company never responded to the complainants no.1's emails, even though, the complainant no. 1 sent various reminders. To the utter dismay of the complainants, the respondent company did not deliver upon their promises as they did not offer the possession to the complainants by 16.09.2019.
27. That the complainants made several attempts to get touch with the respondent company, however, to their utter dismay, the respondent company has outrightly ignored e same. The respondent has miserably failed to deliver upon any of its promises and till date has not reverted to the complainants' emails. Further, to add to their ongoing misery, the complainants came to know that project 1 had been completed and they were also informed that possession of project 1 was being offered to the buyers.
28. That the complainants felt deeply betrayed and it is of utmost significance to state that the complainants only shifted their booking to project 2 upon the promises of timely delivery of the unit in project 2 to the complainants

because of the non-construction of project 1 and no possibility of providing the possession of the unit in project 1 within the stipulated time.

29. That respondent company since 2017 has not responded to any of the complainant no. 1's emails. Further, when the complainants came to know that the construction of Ansal Hub 83 was complete and the buyers were being offered possession, the complainant no. 1 sent an email dated 19.08.2020 to the officials of the respondent company requesting them to shift the complainants' booking to project 1 since there was no progress in construction in project 2 and project 1 was nearing completion. However, till date the respondent company has not reverted to complainant no. 1's emails, despite various reminders from the complainant no.1's side.
30. That the total consideration of project 1 was Rs. 18,39,641/- and the total consideration of project 2 was Rs. 25,87,200/- out of which the complainants till date have paid an amount of Rs. 6,60,455/- towards project 1 and Rs. 15,47,076/- towards project 2. In totality, the complainants have paid an amount of Rs. 22,07,531/- in favour of the respondent company.
31. That the respondent has failed to complete the works of project 2 long after the date of possession and the grace period which had been promised by the respondent company to the complainants. That the complainants are extremely disturbed as till date the possession has not been provided to them and the respondent company has completely stopped reverting to the

complainants no.1's emails and it is unsure as to when the construction of project 2 would be completed.

32. That the respondent has taken undue advantage of the complainants who are extremely honest and sincere. It is quite evident that since the very inception, the respondent company did not have a bona fide intention. the respondent company has resorted to unfair trade practices in order to extract unjustified money from the complainants. Not only did the respondent company miserably fail to provide possession of project 1 to the complainants, when the complainants wanted to exercise their option of seeking refund, the respondent company in a clever manner convinced the complainants to not seek refund and shift their booking to project 2 by paying an additional amount of Rs. 10,56,880/-. The complainants were again disappointed as the respondent company did not provide the possession of the unit in project 2 to the complainants within the stipulated time and have not responded to the complainant no. 1's emails since November 2017. By conducting itself in such an unscrupulous manner, the respondent company has destroyed the essence of the builder buyer agreement. Owing to the unethical actions and behaviour of the respondent company, the complainants have been undergoing immense financial and mental agony since several years, however, the respondent company has shown no concern for the same.

33. That the respondent company has not displayed even an iota of honest behaviour though their conduct. The complainants duly honoured all the terms of the allotment letter and the builder buyer since the very beginning. However, the respondent company has flagrantly violated the terms of the allotment letter and builder buyer agreement.

D. Relief sought by the complainants: -

- i. Direct the respondent to provide possession of the unit in project 1 as promised by the respondent company to the complainants as per the terms of the allotment letter dated 17.09.2012.
 - ii. Direct the respondent to pay delayed interest as per RERA standards and norms to the complainants for delay in delivering the possession from the date o promised possession till the delivery of possession.
34. 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.

E. Reply by the respondent

34. The respondent has contested the complaint on the following grounds:
- (i) That the respondent is a public limited company registered under the Companies Act, 1956, having its registered office at 606, Indraprakash, 21 Barakhamba Road, New Delhi – 110001. The present reply is being filed by the respondent through its duly authorized representative named Mr. Vaibhav Chaudhary whose authority letter is appended

hereto with this reply. The above said project relates and pertains to Licence no. 113 of 2008 dated 01.06.2008 and Licence no.71 of 2010 dated 15.09.2011, which was received from the Director General, Town & Country Planning, Haryana, Chandigarh over the land measuring 2.60 acres details of the same are given in builder buyer agreement, situated within the revenue estate of Village Sihi, Gurugram, which falls within the area of Sector-83, Gurugram-Manesar Urban Development Plan. The building plans of the project have been approved by the DGTCP; Haryana vide memo No. ZP-952/AD (RA)/2014/16361 dated 25.07.2014. Thereafter, the respondent herein was granted the approval of Fire Fighting Scheme from the fire safety point of view of the housing colony measuring 2.60 acres by the Director, Haryana Fire Service, Chandigarh.

- (ii) That the relief sought in the complaint by the complainants are based on false and frivolous grounds and they are not entitled to have any discretionary relief from this authority as the person not coming with clean hands should be thrown out forthwith without going onto the merits of the case. However, the true facts of the case are that the project on the land measuring an area of 19 Kanal 15 Marla (2.46875 acres) comprised in Rect. No.59, Killa No.16/1/3 (0-13), 16/2/2 (0-7), 17 (8-0), 18/1/1 (3-8), 24/1/1 (6-18), and 25/1/1 (0-17), falling in Sector-83 of the Gurugram-Manesar Urban Master Plan 2021 (Project-1). The

land of the project is owned by Mr. Virender Singh S/o Sh. Ramphal jointly with his wife namely, Mrs. Meena Devi, both residents of Village Rampura, Tehsil Sohna, District Gurugram, who in collaboration with M/s Aakansha Infrastructure Pvt. Ltd. having its registered office at House No.216, Village & P.O. Malikpur, Nazafgarh, New Delhi have obtained licence for the development of a commercial project on the land as aforesaid bearing no.87 of 2009 dated 30.12.2009. By a subsequent Agreement dated 10.02.2011, the said owners i.e. Mr. Virender Singh and Mrs. Meena Devi and Aakansha Infrastructure Pvt. Ltd. have assigned their entire rights, entitlements and interests in the land and resultant FSI of the entire project to Samyak Projects Pvt. Ltd. The said Samyak Projects Pvt. Ltd. had entered into a separate Agreement with Ansal Housing & Construction Ltd (the "Developer") to develop and market the entire area to be developed in terms of Licence No.87 of 2009 and other sanctions obtained from the Government of Haryana on the said land as aforementioned.

- (iii) The project named "Ansals HUB 83 Boulevard" is being developed on a Commercial piece of land measuring an area of 2.60 acres equivalent to 20 Kanal 16 Marla comprised in Khewat No.101, Khata No.110, Rect. No.58, Killa No.20/2 Min (1-3), 20/1/2 Min (0-8), 21/1/1 Min (2-9), Rect. No.59, Killa No.16/1/2 (0-19), 16/2/1 (2-11), 25/1/2 Min (5-17) total land measuring 13 Kanal 7 Marla and Khewat No.292, Khata

No.316, Rect. No.59, Killa No.25/1/3 Min (0-5), 25/2 Min (0-8), Rect. No.62, Killa No.5 Min (1-18), total land measuring 2 Kanal 11 Marla, situated in Village Sihi, Tehsil & District Gurugram in Sector-83, of Gurugram-Manesar Urban Complex Master Plan 2021 (Project-2). This is part of the Residential Colony named, Vatika India Next, being developed by Vatika Ltd., in terms of Licence No.113 of 2008 dated 01.06.2008 and Licence No.71 of 2010 dated 15.09.2010 spread over Sector-82, 82A, 83 and 85 of Gurugram - Manesar Urban Complex.

- (iv) The, Vatika Ltd. Agreed to sell/transfer the Project Land together with complete rights/title and interest therein to one M/s Abhash Developers Pvt. Ltd., vide Agreement dated 21.01.2013. By a Tripartite Agreement dated 01.04.2013 among Abhash Developers Pvt. Ltd., Vatika Ltd. And Samyak Projects Pvt. Ltd. agreed to transfer the Project land together with complete rights /title and interest thereon to SSPL. SSPL had entered into an MOU dated 12.04.2013 with Ansal Housing and Construction Ltd. (developer) whereby the development and marketing of the commercial project undertaken by the developer on the project property in terms of the Licence /permission granted by the DGTCP, Haryana and other Government Authorities. The Building Plans for the project have duly been approved by the DGTCP, Haryana vide Memo No. ZP-952/AD (RA)/2014/16361 dated 25.07.2014.

- (v) That sometime in year 2011 the complainants approached the respondent for purchase of an independent unit in its upcoming residential project "Ansal Hub-83 Boulevard" situated in sector-83, village Nawada, Fatehpur, Gurugram. It is submitted that the complainants prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the complainants were fully satisfied with regard to all aspects to the project, including but not limited to the capacity of the respondent to undertake development of the same, that the complainants took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondent.
- (vi) That thereafter, the complainants through an application form dated 17.03.2011 applied to the respondent for provisional allotment of a unit in the project. The complainants, in pursuance of the aforesaid application form, was allotted an independent unit bearing no.313, Type- Office, sale area 417.28 sq. fts in the project, namely, Ansal Hub-83 Boulevard, sector-83, Gurugram. The complainants consciously and wilfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that the complainants shall remit every instalment on time as per the payment schedule. The respondent had no reason to suspect

the bonafide of the complainants. The complainants further undertook to be bound by the terms and conditions of the application form.

(vii) That, it is further submitted that despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. The construction work of the project is swing on full mode and the work will be completed within prescribed time period had there been no force majeure.

(viii) That without prejudice to the aforesaid and the rights of the respondent, it was submitted that the respondent would have handed over the possession to the complainants 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, maybe harmful to the public at large without admitting any liability. Apart from these the demonetization is also one of the main factors to delay in giving

possession to the home buyers as demonetization caused abrupt stoppage of work in many projects. The payments especially to workers to only by liquid cash. The sudden restriction on withdrawals led the respondent unable to cope with the labour pressure. However, the respondent is carrying its business in letter and spirit of the flat buyer's agreement as well as in compliance of other local bodies of Haryana Government as well as Government of Haryana or the Centre Government, as the case may be.

- (ix) That, it is submitted that the complaint is not maintainable or tenable under the eyes of law, as the complainants have not approached this authority with clean hands and has not disclosed the true and material facts relates to this case of complaint. The complainants, thus, have approached the authority with unclean hands and has suppressed and concealed the material facts and proceedings which has direct bearing on the very maintainability of purported complaint and if there had been disclosure of these material facts and proceedings which have direct bearing on the very maintainability of the complaint. The present complaint is not maintainable in view of case law titled as ***S.P.Chengalvaraya Naidu vs Jagan Nath 1994(1) SCC page-1*** in which Hon'ble Apex Court of the land opined that non-disclosure of the material facts and documents amounts to fraud on not only the opposite party, but also on the authority and subsequently the same view was

taken by Hon'ble National Commission in case titled as ***Tata Motors Vs Baba Huzoor Maharaj bearing RP no. 2562 of 2012 decided on 25.09.2013.***

- (x) That without admitting or acknowledging the truth or legality of the allegations advanced by the complainants and without prejudice to the contentions of the respondent, it is respectfully submitted that the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. It is further submitted that merely because the Act applies to ongoing projects which registered with the Authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainants seeking interest or compensation cannot be called in to aid in derogation and ignorance of the provisions of the buyer's agreement. It is further submitted that the interest and compensation for the alleged delay demanded by the complainants are beyond the scope of the buyer's agreement. The complainants cannot demand any interest or compensation beyond the terms and conditions incorporated in the buyer's agreement. However, in view of the law as laid down by the Hon'ble Bombay High Court in case titled ***as Neelkamal Realtors Suburban Pvt. Ltd. Vs. Union of India published in 2018(1) RCR(C)298***, the liberty to the promoters /developers has been given u/s 4 to intimate fresh date of offer of

possession while complying the provisions of Section 3 of the RERA Act as it was opined that the said Act, namely, RERA, is having prospective effect instead of retrospective. Para No.86 and 119 of the above said citation are very much relevant in this regard.

- (xi) That without prejudice to the contentions of the respondent, it is submitted that the present complaint is barred by limitation. The complainants have alleged that due date of possession in respect of the said unit was 16.09.2019, and therefore, no cause of action is arisen in favour of the complainants on 16.09.2019, and thus, the present complaint is barred by law of limitation and the authority lacks jurisdiction.
- (xii) That, it is also a conceded and admitted fact that the projects related to the present complaint have not yet been registered with RERA and as such the authority lacks jurisdiction to entertain the present complaint and it is also worthwhile to mention here that the allegations having been levelled in this complaint are with regard to cheating and alluring which only can be decided by the civil court and in these scenarios the authority also lacks jurisdiction.
- (xiii) That, it is submitted that several allottees, including the complainants, have defaulted in timely remittance of payment of instalment which was an essential, crucial and an indispensable requirement for conceptualisation and development of the project in question.

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

(xiv) That, it would be relevant to mention here in case titled as **Mr. Abhishek Mohan Gupta Vs. M/s Ireo Grace Realtech (Pvt.) Ltd., Complaint No.2044 of 2018**, date of first hearing 12.03.2019, decided on 12.03.2019 by the hon'ble authority, in para no.36, it was held that

“as per clause 13.3 the respondent has agreed to offer the possession of the said apartment within a period of 42 months from the date of approval of building plans and/or fulfilment of preconditions imposed thereunder + 180 days grace period. The building plan for the project in question was approved on 23.07.2013 which contained a precondition under clause 17(iv) that respondent should obtain clearance from Ministry of Environment and Forest, Government of India before starting construction of project. The said environment clearance for the project in question was

granted on 12.12.2013 containing a pre-condition of obtaining fire safety plan duly approved by fire department before starting construction. The respondent obtained the said approval on 27.11.2014. Therefore, the due date of possession comes out to be 27.11.2018 and the possession has been delayed by 3 months and 13 days till the date of decision."

35. 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.

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

36. 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

37. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to

the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter 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.

G.1 Objection regarding jurisdiction of the complaint w.r.t the apartment buyer's agreement executed prior to coming into force of the Act.

38. The respondent submitted that the complaint is neither maintainable nor tenable and is liable to be outrightly dismissed as the apartment buyer's agreement was executed between the complainants and the respondent prior to the enactment of the Act and the provision of the said Act cannot be applied retrospectively.
39. 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.”

40. 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."

41. 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.

G.II Objection regarding delayed payments

42. Though an objection has been taken in the written reply that the complainants failed to make regular payments as and when demanded. So, it led to delay in completing the project. The respondent had to arrange funds from outside for continuing the project. However, the plea advanced in this regard is devoid of merit. A perusal of statement of accounts shows otherwise wherein like other allottees, the complainants had paid more than 80% of the sale consideration. The payments made by the allottee does not

match the stage and extent of construction of the project. So, this plea has been taken just to make out a ground for delay in completing the project and the same being one of the force majeure.

H. Findings on relief sought by the complainants.

Delay possession charges:

- i. Direct the respondent to provide possession of the unit in project 1 as promised by the respondent company to the complainants as per the terms of the allotment letter dated 17.09.2012.
 - ii. Direct the respondent to pay delayed interest as per RERA standards and norms to the complainants for delay in delivering the possession from the date of promised possession till the delivery of possession.
43. In the present complaint, the complainants were allotted unit no. 313 in project 1. As per clause 26, of allotment letter for unit situated in project 1, possession of the unit was to be handed over within 36 months from date of building plan approvals i.e.; 25.07.2014 or from date of execution of allotment of letter i.e.; 17.09.2012, whichever is later. In that case, the due date of the project would have been **25.07.2017** which is 36 months from date of approval of building plan, being later. As the project was nowhere near completion and complainants were worried about the timely completion of the project, so they approached various concerned persons and were given an option to shift their project from project 1 i.e.; Ansal Hub 83 to project 2 Ansal Hub 83 Boulevard. Somewhere in **year 2014**,

complainants shifted their investment to project no. 2 and in pursuance of that, unit no. T-015 was allotted to the complainants in project 2 and a builder buyer's agreement dated 16.09.2015 was subsequently executed. It was in 2014 when the complainants exercised such option, which is much earlier than due date of handing over of possession in concerned project 1. Moreover, the complainants have agreed to abide themselves by terms and conditions of the builder buyer's agreement executed between the parties on 16.09.2015. Thus, at this point of time complainants cannot ask the respondent to re- shift the project of the complainants.

44. 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."

45. Clause 30 of the builder buyer's agreement (in short, the agreement) dated 16.09.2015, provides for handing over of possession and is reproduced below:

"30. Possession

"The developer shall offer possession of the unit any time, within a period of 42 months from 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, whichever is later, subject to timely payment of all the dues by Buyer and subject to force-majeure circumstances as described in Clause 31. Further, there shall be a grace period of 6 months allowed to the Developer over and above the period of 42 months as above in offering the possession of the Unit.

46. The builder 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 builder 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 builder 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.
47. The respondent promoter has proposed to handover the possession of the subject apartment within a period of 42 months from the execution of the agreement or the date of approval of and sanctions necessary for commencement of construction subject to unforeseen delays beyond the

reasonable control of the company i.e., the respondent/promoter. Further, the authority in the present case observed that, the respondent has misused its powers and stated an ambiguous clause where, possession is subject to various approvals and sanctions. This practice is not admissible. In the present case, date of execution of buyer's agreement was 16.09.2015 whereas date of building approval was 25.07.2014. Due date of possession shall be calculated from date of execution of buyer's agreement i.e.; 16.09.2015 being later, as per clause 30 of agreement.

48. **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.

49. 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.

50. 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%.
51. 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;"*
52. 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.
53. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date

as per the agreement. By virtue of clause 30 of the builder buyer's agreement executed between the parties on 16.09.2015, the possession of the allotted unit i.e.; T-015, project 2 was to be delivered within stipulated time i.e., by 16.03.2019. Therefore, the due date of handing over possession was 16.03.2019 which is calculated from the date execution of buyer's agreement being later i.e. 16.09.2015. The respondent has failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the flat 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., 16.03.2019 till handing over of possession after the date of receipt of valid occupation certificate as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

I. Directions of the authority

54. 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., 16.03.2019 till handing over of possession after receipt of valid

occupation certificate as per section 18(1) of Act of 2016 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 complainant is 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 complainant which is not part of the buyer's agreement.
40. Complaint stands disposed of.
41. File be consigned to the registry

(Samir Kumar)
Member

(Vijay Kumar Goyal)
Member

Dated:19.08.2021