

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

Complaint no. : 1581 of 2019
First date of hearing: 17.09.2019
Date of decision : 19.08.2021

Pawan Gupta

Address: - H-486, Vikas Puri, New Delhi-110018

Complainant

Versus

Ansal Housing & Construction Ltd.

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

Respondent

CORAM:

Shri Samir Kumar

Member

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Mr. Govind Narain Gautam

Advocate for the Complainant

Ms. Meena Hooda

Advocate for the Respondent

ORDER

1. The present complaint dated 12.04.2019 has been filed by the complainant/allottee 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	Ansal Hub 83, Sector-83, Gurugram
2.	Project area	2.46875 acres
3.	Nature of the project	Commercial colony
4.	DTCP license no. and validity status	87 of 2009 dated 30.12.2009 valid up to 29.12.2013
5.	Name of licensee	Smt. Meena Devi
6.	RERA Registered/ not registered	Not registered
7.	Date of building plan approval	11.09.2013 (As per page 36 of reply)
8.	Date of execution of allotment cum buyer agreement	05.09.2012 (As per annexure P/2 of complaint)
9.	Date of endorsement of unit	19.10.2013 (As per annexure P/4 of complaint)
10.	Unit no.	Shop no.- 55 (As per page 01 of allotment cum buyer agreement, as annexure P/2 of the complaint)
11.	Unit measuring	941.81 sq. ft.

		(As per page 01 of allotment cum buyer agreement, as annexure P/2 of the complaint)
12.	Changed Unit area	627 sq. ft. (As per annexure P/3 of the complaint)
13.	Due date of delivery of Possession (As per clause 26, the developer shall offer possession of the unit within 36 months from the date of building plans or the execution of agreement, whichever is later)	11.09.2016 (Calculated from the date of approval of building plan, being later i.e. 11.09.2013)
14.	Payment plan	Construction based payment plan (As per page 17 of allotment cum buyer agreement, as annexure P/2 of the complaint)
15.	Total sale consideration	Rs. 55,40,268.71/- (As per statement of account dated 21.03.2017, as annexure P/5 of complaint)
16.	Amount received from the complainant	Rs. 55,07,451.41/- (As per statement of account dated 21.03.2017, as annexure P/5 of 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., 19.08.2021	4 years 11 months 08 days

B. Facts of the complaint

3. That on 30.07.2011, the erstwhile owner M/S AXIOM LANDBASE PVT LTD. booked a unit in the project named "Ansals Hub 83" in Sector 83, Gurugram (hereinafter, "the project"). On 19.10.2013, the erstwhile owner transferred all the rights and liabilities in respect of such allotment to the complainant with due permission of the respondent company. Accordingly, the complainant was allotted a shop bearing unit no. Shop-055.
4. That on 05.09.2012, a builder buyer's agreement was entered into between the parties wherein as per clause 26, the developer should offer possession of unit within 36 months from the date of sanction of building plans or date of execution of allotment letter, whichever is later.
5. That vide letter dated 22.10.2013, the respondent informed the complainant that the area and cost of the shop has been changed and the area of the shop has been reduced to 627 sq. ft. from 941.81 sq. ft. and accordingly cost of the shop has also been reduced to Rs 58,36,899.75/- (Rs 50,75,565/- as basic cost plus Rs 7,61,334.75/- as PLC cost) from Rs 87,67,544.71/ (Rs 76,23,951.93/- as basic cost plus Rs 11,43,592.78/- as PLC cost).
6. That out of the total cost of the said unit a sum of Rs.33,67,785.431/- was paid by the first purchaser, M/S AXIOM LANDBASE PVT LTD., till 19.10.2013 and after that, the complainant has paid the further instalments to the respondent till

21.03.2017. Thus, a total sum of Rs.55,07,451.41/ has been paid to the respondent till 21.03.2017. An additional amount to the payment of above sum of Rs.4,50,000/- was charged by the respondent.

7. That vide letter dated 09.08.2016 through e-mail, the complainant asked the respondent to handover the possession of the shop to him and also made the things clear that the payment demand for the remaining amount will not be honoured until the respondent declare the date of handover of possession. But the respondent did not even bother to reply.
8. That vide letter dated 21-03-2017, the respondent raised a demand. of Rs 2,65,198.28/- but there was no hint about the date of delivery of possession. Further, vide letter dated 22-03-2017, the complainant again asked for the possession of the shop and conveyed his concerns over status of construction and possible delay in handover of possession and also told the respondent that labour cess, firefighting works and Haryana VAT are not buyer's liabilities.
9. That vide letter dated 28-03-2017, the respondent replied to the complainant and made a fake commitment to deliver the possession by March 2018. But vide letter dated 04-04-2017, the complainant showed his disbelief on the reply of respondent and asked for a meeting with the technical team to assess the actual

status of construction and time left in possession handover. But the respondent gave no reply.

10. That vide letter dated 12-10-2018, the complainant asked respondent not to raise further payment demands till the offer of possession as he already paid more than 80 percent of total consideration and the remaining amount would be paid on delivery of possession. The complainant also asked the respondent to pay the interest @24% p.a. on the amount paid by him till the present date as charged by the respondent for delay in payment.
11. That vide letter dated 20-02-2019, the respondent raised a demand of Rs 3,60,826.20/-, including Rs 62,810.84/- as interest for a period from 18.01.2017 to 14.02.2019. Possession was to be offered on 05.09.2015 but still there was no information about the date of offer of possession. That despite repeated calls, meetings and emails sent to the respondents, no definite commitment was shown for timely completion of the project and no appropriate action was taken to address the concerns and grievances of the complainant.
12. That the committed date of possession was 05.09.2015 but even after payment of more than 80 percent of total consideration, the respondent is still not offering the possession and raising further demands again and again while the complainant several times made it clear to the respondent that he will pay the rest amount at

the time of delivery of possession only. But without offering the possession of the said shop, the respondent is demanding complete payment which is illegal and arbitrary.

13. That repeated calls, meetings and correspondences with the respondent and multiple visits to know the actual construction status not only caused loss to the complainant in terms of time, money and energy but also caused mental agony to him.

C. Relief sought by the complainant: -

- 1) Direct the respondent to handover the possession of the shop booked by the complainant.
 - 2) Direct the respondent to pay the interest on the total amount paid by the complainant at the rate of 24% per annum, counted from the date committed for the offer of possession i.e., 05.09.2015.
14. 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

15. The respondent has contested the complaint on the following grounds:
 - (i) That the present complaint is neither maintainable nor tenable by both law and facts. It was submitted that the present complaint is not maintainable before this authority. The complainant has filed the present complaint seeking refund and interest. It is respectfully submitted that complaints

pertaining to refund, compensation and interest are to be decided by the adjudicating officer under Section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter be referred to as "the Act" for short) read with Rule 29 of the Haryana Real Estate (Regulation and Development) rules, 2017, (hereinafter be referred to as "the Rules") and not by this authority. The present complaint is liable to be dismissed on this ground alone.

- (ii) That even otherwise, the complainant has no locus-standi and cause of action to file the present complaint as the complainant did not come forward to have the allotment even after many repeated requests made by the respondent in this regard.
- (iii) 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, namely, Mr. Vaibhav Chaudhary whose authority letter is attached herewith. The above said project is related to Licence No.87 of 2009 dated 30.12.2009, received from the Director General, Town and Country Planning, Chandigarh, Haryana (DGTCP) over the land measuring 19 kanal 15 marla (2.46875 acres) details of the

same are given in builder buyer agreement falling in sector-83 of the Gurugram-Manesar Urban Master Plan-2021.

- (iv) That the relief sought in the complaint by the complainant is based on false and frivolous grounds; thus, are not entitled to any discretionary relief from this authority, as the person not coming with clean hands may be thrown out without going into the merits of the case. However, the true facts of the case are that the land of the project is owned by Mr. Virender Singh s/o Sh. Ramphal jointly with wife Mrs. Meena Devi both residents of village Rampura, Tehsil Sohna, District Gurugram, who in collaboration with Aakansha Infrastructure Pvt. Ltd. have obtained license for the development of a commercial project on the land as aforesaid bearing license no. 87 of 2009 dated 30.12.2009. By a subsequent agreement dated 10.02.2011 the said owners viz. Mr. Virender Singh, 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. And further, a separate agreement was entered into between Ansal Housing Limited to develop and market the entire area to be developed under aforesaid licence.
- (v) That mere perusal of the complaint reveals that there is not any allotment letter and subsequent builder buyer agreement and

in the absence of both the documents, how the complainant can claim any relief and the respondent is liable to refund even a single penny to the complainant. It is worthy to note here that it may be possible that the alleged receipts on which the complainant is relying upon may be procured and fabricated by the complainant, thus authenticity and genuineness of the same also be required to be proved by the complainant by cogent and coherent evidence.

- (vi) That without prejudice stated above, as per the version of the complainant, it was submitted that sometime in year 2011 the complainant 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 complainant prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the complainant was 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 complainant took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondent.

- (vii) That thereafter, the complainant through an application form dated 30.07.2011 applied to the respondent for provisional allotment of a unit in the project. The complainant, in pursuance of the aforesaid application form, was allotted an independent unit bearing no. 55, sale area 941.81 sq. fts in the project, namely, Ansal Hub-83 Boulevard, sector-83, Gurugram. The complainant 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 complainant shall remit every instalment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainant. The complainant further undertook to be bound by the terms and conditions of the application form.
- (viii) That, it was 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. It is also submitted that the construction work of the project is swing on full mode and the work will be completed within prescribed time period as given by the respondent to this authority.
- (ix) 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 complainant within time had there been no force majeure circumstances beyond the control of the respondent, there had been several circumstances which were absolutely beyond and out of control of the respondent such as orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble Punjab & Haryana High Court duly passed in Civil Writ Petition No.20032 of 2008 through which the shucking/extraction of water was banned which is the backbone of construction process, simultaneously orders at different dates passed by the Hon'ble National Green Tribunal restraining thereby the excavation work causing Air Quality Index being worse, 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.

- (x) That, it is submitted that the complaint is not maintainable or tenable under the eyes of law, as the complainant has not approached this authority with clean hands and has not disclosed the true and material facts relates to this case of complaint. The complainant, thus, has 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.***
- (xi) That without admitting or acknowledging the truth or legality of the allegations advanced by the complainant and without prejudice to the contentions of the respondent, it was 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 was 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 complainant seeking interest cannot be called in to aid in derogation and ignorance of the provisions of the flat buyer's agreement. It was further submitted that the interest for the alleged delay demanded by the complainant is beyond the scope of the buyer's agreement. The complainant cannot demand any interest or compensation beyond the terms and conditions incorporated in the buyer's agreement. The complainant cannot demand any interest or compensation beyond the terms and conditions incorporated in the buyer's agreement.

- (xii) That without prejudice to the contentions of the respondent, it was submitted that the present complaint is barred by limitation. The complainant has himself alleged that due date of possession in respect of the said unit was to be given not later than March 2017, and therefore, no cause of action is arisen in favour of the complainant in January 2016, and thus, the present complaint is barred by law of limitation.

(xiii) That, it is also a conceded and admitted fact that the project related to the present complaint has not yet been registered with RERA and as such the authority lacks jurisdiction to entertain the present complaint.

(xiv) That, it was submitted that several allottees, including the complainant, has defaulted in timely remittance of the payment of instalment which was an essential, crucial and an indispensable requirement for conceptualisation and development of the project in question. Furthermore, when the proposed allottees defaulted in their payment as per schedule agreed upon, the failure has a cascading effecting on the operation and the cost for proper execution of the project increase exponentially whereas enormous business losses befall upon the 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 was 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 complainant are totally baseless.

Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

E. Written submission by the complainant: -

16. That the respondent has failed to fulfil his obligation under section 11(4)(a) of the Act of 2016 and committed default in timely handing over the possession of the shop allotted to the complainant. As per the builder buyer agreement possession of the said shop should be offered to the complainant by 05.09.2015 i.e., within 36 months from the date of execution of builder buyer agreement. But the same was not handed over to the complainant on the promised date. Complainant has written multiple letters and e-mails to respondent to ask the respondent to handover the possession, but still there is no hint about the date of possession handover to the complainant.
17. That as per para 181 of *Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and ors. (W.P 2737 of 2017)*, wherein the Bombay HC bench held that:
- "Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements,"*
18. 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

19. 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

20. 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.

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

21. The respondent submitted that the complaint is neither maintainable nor tenable and is liable to be outrightly dismissed as the apartment buyer's agreement was executed between the

- complainant and the respondent prior to the enactment of the Act and the provision of the said Act cannot be applied retrospectively.
22. 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."

23. 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."

24. 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

25. Though an objection has been taken in the written reply that the complainant 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 complainant 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. Moreover, neither the respondent has obtained the occupation certificate nor offered the possession of the unit. 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 complainant.

Delay possession charges: To direct the respondent to give delayed possession interest to the complainant at the rate of 24% per annum.

26. In the present complaint, the complainant intends to continue with the project and are seeking delay possession charges at prescribed rate of interest on amount already paid by them as provided under the proviso to section 18(1) of the Act which reads as under: -

"Section 18: - Return of amount and compensation

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

.....
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

27. Clause 26 of the allotment letter cum agreement (in short, the agreement) dated 05.09.2012, provides for handing over of possession and is reproduced below:

"26. Possession

"The developer shall offer possession of the unit any time, within a period of 36 months from the date of sanction of building plans or date of execution of allotment letter whichever is later, subject to force-majeure circumstances such as act of God, fire, earthquake, flood, civil commotion, war, riot, explosion, terrorist acts, sabotage, or general shortage of energy labour equipment facilities material or supplies, failure of transportation, strike, lock outs, action of labour union, any dispute....."

28. 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 apartment buyer's agreement lays down the terms that govern the sale of different kinds of properties like residential, commercials etc. between the buyer and builder. It is in the interest of both the parties to have a well-drafted 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.

29. The respondent promoter has proposed to handover the possession of the subject apartment within a period of 36 months from the execution of the agreement or the date of approval of building plans subject to unforeseen delays beyond the reasonable control of the company i.e., the respondent/promoter.
30. Further, the authority in the present case observed that, the respondent has not kept the reasonable balance between his own rights and the rights of the complainant/allottee. The respondent has acted in a pre-determined and preordained manner. The respondent has acted in a highly discriminatory and arbitrary manner. The allotment letter cum agreement was also executed between the respondent and the complainant on 05.09.2012. The date of approval of building plan is 11.09.2013. On a bare reading of the clause 26 of the agreement reproduced above, it becomes clear that the possession was to be offered from the date of sanction of building plans or the date of execution of the agreement whichever is later. As the date of sanction of building plans is later,

in the light of the above-mentioned clause, the authority is of the view that the date of due date of possession shall be calculated from date of approval of buildings plan i.e.11.09.2013. Therefore, due date of possession is 11.09.2016.

31. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is 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., 19.08.2021 is @7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., @9.30%.
34. The definition of term 'interest' as defined under section 2(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 complainant shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
36. In the instant case, the complainant/subsequent allottee had been acknowledged as an allottee by the respondent vide endorsement letter dated 19.10.2013. The authority has perused the endorsement letter where the respondent- builder has confirmed the transfer of allotment in favour of subsequent allottee, Mr.

- Pawan Gupta (complainant) and the instalments paid by the original allottee, M/s Axiom Landbase Pvt. Ltd., are adjusted in the name of the subsequent allottee and the next instalments are payable/due as per the original allotment cum buyer's agreement. Similarly, we have also perused the builder buyer's agreement which was originally entered into between the original allottee, M/s Axiom Landbase Pvt. Ltd, and the respondent-builder, M/s Ansal Housing & Construction Limited. The same builder buyer's agreement has been endorsed in favour of Mr. Pawan Gupta, subsequent allottee. All the terms of builder buyer's agreement remain the same, so it is quite clear that the subsequent allottee has stepped into the shoes of the original allottee.
37. Though the promised date of delivery was 11.09.2016 but the possession of the unit is not offered by the said date. If these facts are taken into consideration, the complainant/subsequent allottee had agreed to buy the unit in question with the expectation that the respondent/promoter would abide by the terms of the builder buyer's agreement and would deliver the subject unit by the said due date. At this juncture, the subsequent purchaser cannot be expected to have knowledge, by any stretch of imagination, that the project will be delayed, and the possession would not be handed over within the stipulated period. So, the authority is of the view that in cases where the subsequent allottee had stepped into the shoes of original allottee before the due date of handing over possession, the delayed possession charges shall be granted w.e.f. due date of handing over possession.

38. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 26 of the allotment letter cum agreement executed between the parties on 05.09.2012, the possession of the subject apartment was to be delivered within stipulated time. Therefore, the due date of handing over possession was 11.09.2016 which is calculated from the date of approval of building plan i.e. 11.09.2013. 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., 11.09.2016 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

39. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure

compliance of obligations cast upon the promoters as per the function entrusted to the authority under sec 34(f) of the Act:

- i. The respondent is directed to pay the interest at the prescribed rate i.e., 9.30 % per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 11.09.2016 till handing over of possession after receipt of 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