

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

Complaint no. : 947 of 2021
Date of filing complaint: 19.02.2021
First date of hearing : 13.08.2021
Date of decision : 05.10.2021

| | |
|---|--------------------|
| 1. Sangeeta Kumari Khurana R/O: - 386, Seemant Vihar, Sector-14, Kaushambi, Ghaziabad- 201010 | Complainant |
| Versus | |
| 1. M/s SS Group Private Limited Regd. Office at: - 77, SS House, Sector-44 Gurugram, Haryana-122002 | Respondent |

| | |
|----------------------------------|---------------|
| CORAM: | |
| Shri Samir Kumar | Member |
| Shri Vijay Kumar Goyal | Member |
| APPEARANCE: | |
| Sh. Shashank Singh (Advocate) | Complainant |
| Sh. Dhruv Dutt Sharma (Advocate) | Respondent |

ORDER

1. The present complaint 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.

A. Unit and project related details

2. The particulars of unit details, 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 | "The Coralwood", Sector-84, Gurugram |
| 2. | Project area | 15.275-acres |
| 3. | Nature of the project | Group Housing Colony |
| 4. | a) DTCP license no. | 59 of 2008 dated 19.03.2008 |
| | b) License valid up to | 18.03.2020 |
| | c) Name of the licensee | M/s North Star Apartment Private Limited |
| 5. | a) RERA registered/not registered | Registered |
| | b) Registration certificate no. | 381 of 2017 dated 12.12.2017 |
| | c) Validity status | 31.12.2019 |
| 6. | Building plan approved on | 19.12.2011 |
| 7. | Unit no. | 1103, 11 th Floor, Type G, Tower-F [Page no. 20 of complaint] |
| 8. | Unit measuring | 2250 sq. ft. |

| | | |
|-----|---|--|
| 9. | Date of execution of buyer's agreement | 04.07.2012 [Page no. 19 of complaint] |
| 10. | Payment plan | Construction Linked Payment Plan [Page no. 38 of complaint] |
| 11. | Due date of delivery of possession [as per clause 8.1 of buyer's agreement, 36 months from the date of execution of said agreement plus 90 days of additional grace period] [Page no. 25 of complaint] | 04.07.2015 [Note: Grace period is not allowed] |
| 12. | Total consideration | Rs.94,76,000/- [As per applicant ledger dated 08.07.2021 on page no. 57 of reply] |
| 13. | Total amount paid by the complainant | Rs.96,93,681/- [As per applicant ledger dated 08.07.2021 on page no. 57 of reply] |
| 14. | Offer of Possession | 29.02.2020 [Page no. 43 of the complaint] |
| 15. | Occupation Certificate | 06.03.2020 [Page no. 59 of the reply] |
| 16. | Delay in handing over the possession till offer of possession plus 2 months i.e., 29.04.2020 | 4 years 9 months 25 days. |

B. Facts of the complaint

3. That M/s North Star Apartments Pvt. Ltd. is a company incorporated under the provisions of Companies Act, 1956.
4. That M/s North Star Apartments Pvt. Ltd owned a land

measuring 15.275 acres in village 'Sihi', sector-84, district-Gurugram with easement rights and in respect of which Director Town and Country Planning, Haryana, Chandigarh issued license bearing no. 59 of 2008 for developing the group housing complex.

5. Pursuant to the aforesaid license, the respondent/developer is developing the group housing complex, together with appurtenant spaces, by name of the "The Coralwood" (Hereinafter referred as the 'said project') as the group housing complex. The said complex comprises of various buildings, parking spaces and other utilities in accordance with sanctioned plan and approval.
6. That the complainant applied vide application dated 15.05.2012 agreeing to the terms and conditions as set out in the application for allotment of residential flat no. 1103 type-G located in tower-F on 11th floor, in the said project having an approximate super area of 2250 sq. feet. That the complainant paid a sum of Rs. 9,00,000/- towards the "sale price" of the flat at the time of application mentioned project.
7. That pursuant to the scheme of amalgamation approved by Hon'ble High Court of Punjab and Haryana, M/s North Star Apartment Limited has merged with the respondent company herein and hence forth all rights and responsibilities of M/S North Star Apartment Limited under the flat buyer agreement in question executed with the complainant have been taken over by the respondent. Thus,

the respondent herein requested the complainant to make all payments in relation to the builder agreement dated 4.07.2012.

8. That the respondent sent a communication dated 29.02.2020 to the complainant that the respondent has completed the development of the said project and the same is ready for possession. In the said letter, it was also indicated that the unit no. F-1103 has been allotted to the complainant and the letter sought remaining payment within 15 days from the date of present communicated/offer letter. The respondent also requested to the complainant to take possession of the above-mentioned unit within 15 days from the receiving of the present communication and as well as after making payment.
9. That the respondent vide its official email ID dated 04.03.2020 sent the offer of possession to the complainant. An amount of Rs 4,70,885/- was indicated as 'arrears of previous demands' in annexure 'A' of offer of possession letter dated 29.02.2020.
10. That the complainant replied to the offer of possession, which was sent by the respondent and pointed out about the arrears of previous demands and reminded that the complainant has paid all the demands received from the respondent's end. However, the complainant sought explanation in relation to the Rs 4,70,885/- as arrears of previous demands. It is pertinent to mention that the said offer of possession is delayed. However, the complainant



expressed her interest in taking the possession of the flat but sought compensation for delayed possession.

11. That the husband of the complainant wrote an email communication to the respondent and expressed that the respondent did not consider or even mention about the compensation for delayed delivery of possession as per clause 9 & 10 of the allotment letter. The complainant also pointed out that finishing work on the allotted unit was also not completed. In addition to that the complainant also sought ledger in relation to her flat no. F-1103.
12. That the respondent informed the complainant vide email communication dated 19.03.2020, wherein the respondent stated that they will pay the compensation as per builder-buyer agreement dated 04.07.2012 signed between the complainant and the respondent. In addition to that the respondent also provided payment plan and statement of account sought by the complainant. The total amount as per the schedule made by the complainant from 15.05.2012 to 06.12.2019 is Rs.92,24,417/-.
13. That the complainant wrote to the respondent again to remind them about the revised demand letter and sought the payment qua delay caused in delivery of possession of unit no. F-1103. The complainant again reminded the respondent/developer about the compensation for delay in delivery of possession.
14. That the complainant again reminded the respondent about the compensation for delay in delivery of possession. In the

said email communication, the complainant pointed out about the telephonic conversation and about the previous emails. The complainant again reminded the respondent and sought reply.

15. That the respondent replied vide their email communication dated 13.06.2020, and informed that compensation will be governed as per builder buyer agreement. In addition to that the respondent supplied the account ledger and demand ledger for the unit F-1103.
16. That the husband of the complainant vide his email communication dated 14.07.2020 informed the respondent that the complainant has made the payment of Rs 4,74,313.
17. That the respondent sent an email communication to the complainant and asked her to deposit the amount as per demand letter. The complainant wrote back a detailed email to the respondent stating inter-alia:
 - a. The complainant sought receipt of Rs 4,74,313/- which was transferred in July.
 - b. The complainant sought compensation amount for delayed delivery of possession (4 years and six months).
 - c. The complainant sought 18% interest on the money advanced by the complainant.

C. Relief sought by the complainant.

18. The complainant has sought following relief(s):
 - (i) Direct the respondent to deliver the possession of allotted unit as per the terms of buyer's agreement

and in accordance with the law laid down in this regard.

- (ii) Direct the respondent to grant the 18 % interest on money advanced (for the delay caused in giving the delivery of possession) from the due date of delivery of possession i.e., 07.07.2015 till date.
- (iii) Direct the respondent to perish the claim of "holding-charge" levied by the respondent in as much as it's arbitrary and untenable in the light of present circumstances

D. Reply by the respondent.

19. That at the outset, the respondent humbly submits that each and every averment and contention, as made/raised in the complaint, unless specifically admitted, be taken to have been categorically denied by the respondent and may be read as travesty of facts.
20. That the complaint filed by the complainant before the Id. authority, besides being misconceived and erroneous, is untenable in the eyes of law. The complainant has misdirected herself in filing the above captioned complaint before this Id. authority as the reliefs being claimed by the complainant, besides being illegal, misconceived and erroneous, cannot be said to even fall within the realm of jurisdiction of this Id. authority.
21. That it would be pertinent to make reference to some of the provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act of 2016) and the



Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as '2017 Haryana Rules'), made by the Government of Haryana in exercise of powers conferred by sub-section (1) read with sub-section (2) of section 84 of the act of 2016. Section 31 provides for filing of complaints with this ld. authority or the adjudicating officer. Sub-section (1) thereof provides that any aggrieved person may file a complaint with the authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of Act of 2016 or the rules and regulations made there under against any promoter, allottee or real estate agent, as the case may be. Sub-section (2) provides that the form, manner and fees for filing complaint under sub-section (1) shall be such as may be prescribed. Rule 28 of 2017 Haryana Rules provides for filing of complaint with this ld. authority, in reference to section 31 of Act of 2016. Sub-clause (1) *inter alia*, provides that any aggrieved person may file a complaint with the authority for any violation of the provisions of Act of 2016 or the rules and regulations made thereunder, save as those provided to be adjudicated by the adjudicating officer, in form 'CRA'. Significantly, reference to the "authority", which is this ld. authority in the present case and to the "adjudicating officer", is separate and distinct. "adjudicating officer" has been defined under section 2(a) to mean the adjudicating officer appointed under sub-section (1) of section 71, whereas the "authority" has been defined

under section 2(i) to mean the Real Estate Regulatory Authority, established under sub-section (1) of section 20.

22. Apparently, under section 71, the adjudicating officer is appointed by the authority in consultation with the appropriate Government for the purpose of adjudging compensation under Sections 12, 14, 18 and 19 of the Act of 2016 and for holding an enquiry in the prescribed manner. A reference may also be made to section 72, which provides for factors to be taken into account by the adjudicating officer while adjudging the quantum of compensation and interest, as the case may be, under section 71 of the Act. The domain of the adjudicating officer cannot be said to be restricted to adjudging only compensation in the matters which are covered under sections 12, 14, 18 and 19 of the Act. The inquiry, as regards the compliance with the provisions of sections 12, 14, 18 and 19, is to be made by the adjudicating officer. This submission find support from reading of section 71(3) which inter alia, provides that the adjudicating officer, while holding inquiry, shall have power to summon and enforce the attendance of any person and if on such inquiry he is satisfied that the person had failed to comply with the provisions of any of the sections specified in sub-section (1) he may direct to pay such compensation or interest, as the case may be, as he thinks fit in accordance with the provisions of any of those sections. Suffice it is to mention that the sections specified in sub-section (1) of section 71 are sections 12, 14, 18 and 19.

23. That the complainant is seeking interest which, from reading of the provisions of the Act of 2016 and 2017 Rules, especially those mentioned hereinabove, would be liable for adjudication, if at all, by the adjudicating officer and not this Id. authority. thus, on this ground alone the complaint is liable to be rejected.
24. That further, without prejudice to the aforementioned, even if it was to be assumed though not admitting that the filing of the complaint is not without jurisdiction, even then the claim as raised cannot be said to be maintainable and is liable to be rejected for the reasons as ensuing.
25. From the conjoint reading of the aforementioned sections/ rules, form and annexure 'A', it is evident that the 'agreement for sale', for the purposes of 2016 Act as well as 2017 Haryana Rules, is the one as laid down in annexure 'A', which is required to be executed inter se the promoter and the allottee.
26. That it is a matter of record and rather a conceded position that no such agreement, as referred to under the provisions of Act of 2016 and 2017 Haryana Rules, has been executed between respondent and the complainant. Rather, the agreement that has been referred to, for the purpose of getting the adjudication of the complaint, though without jurisdiction, is the flat buyer's agreement, executed much prior to coming into force of Act.

27. The adjudication of the complaint for interest and compensation, as provided under sections 12, 14, 18 and 19 of the Act of 2016, if any, has to be in reference to the agreement for sale executed in terms of Act and 2017 Haryana Rules and no other Agreement. This submission of the respondent *inter alia*, finds support from reading of the provisions of 2016 Act as well as 2017 Haryana Rules, including the aforementioned submissions.
28. Thus, in view of the submissions made above, no relief much less as claimed can be granted to the complainant. It is reiterated at the risk of repetition that this is without prejudice to the submission that in any event, the complaint, as filed, is not maintainable before this Id. authority.
29. That the reliefs sought by the complainant appear to be on misconceived and erroneous basis. Hence, the complainant is estopped from raising the pleas, as raised in respect thereof.
30. That the complaint filed by the complainant is abuse and misuse of process of law and the reliefs claimed as sought for, are liable to be dismissed. No relief much less any interim relief, as sought for, is liable to be granted to the complainant.
31. That the complainant has miserably and wilfully failed to make payments in time or in accordance with the terms of the allotment/ flat buyer's agreement. It is submitted that the complainant has frustrated the terms and conditions of the flat buyer's agreement, which were the essence of the arrangement between the parties and therefore, the

complainant now cannot invoke a particular clause, and therefore, the complaint is not maintainable and should be rejected at the threshold. that the complainant has also misdirected in claiming interest on account of alleged delayed offer for possession. Besides the fact that this ld. authority cannot be said to have any jurisdiction to award/grant such relief to the complainant, it is submitted that there cannot be said to be any alleged delay in offering of the possession.

32. That it has been categorically agreed between the parties that subject to the complainant having complied with all the terms and conditions of the flat buyer's agreement and not being in default under any of the provisions of the said agreement and having complied with all provisions, formalities, documentation, etc., the developer proposed to handover the possession of the unit in question within a period of 36 months from the date of signing of the agreement, which period would automatically stand extended for the time taken in getting the building plan sanctioned. it had been agreed that the respondent would also be entitled to a further grace period of 90 days after expiry of 36 months or such extended period for want of building sanction plans.
33. That the Municipal Corporation of Gurugram vide direction dated 14.10.2019 bearing memo no. MCG/ADMC/2019 imposed a complete ban from 11.10.2019 to 31.12.2019 on the construction activities in Gurugram. Further,

Environment Pollution (Prevention and Control) Authority for NCR vide direction dated 01.11.2019 bearing EPCA-R/2019/L-53 imposed a complete ban from 01.11.2019 to 05.11.2019. Further, Hon'ble Supreme Court vide its order dated 04.11.2019 in the matter bearing W.P (C) No. 13029/1985 also banned the construction activities in Delhi NCR till further orders keeping in mind the damage caused to the environment due to construction and demolition activities. It is pertinent to mention here that the Hon'ble Supreme Court has only on 09.12.2019 partially uplifted the ban on construction activities in Delhi NCR between 6 am to 6 pm. There after despite facing practical issues in arranging manpower, the respondent had managed to maintain the minimum labour force constantly in the labour camp at the project site to complete the pending work at the earliest. This clearly shows bonafide intention of the respondent to complete the project on time. Even in the year 2018, vide Notification No. EPCA- R/2018/L-91 and EPCA-R/2018/100 periodic ban on constructions were imposed. Such bans that have been imposed from time to time in the past years, not only had enormous adverse impact on the construction of infrastructure projects. The adverse effects of banning the construction activity disrupts the arrangement of plant & machinery, supply of raw material and manpower resources as it takes a long time to reorganize the labour force once the ban is lifted. Another factor to be considered is that most of the labour force in NCR hails from eastern UP/Bihar so

during such period wherein the ban remains in effect, the labour force usually heads back to their hometowns, since it becomes difficult for them to sustain here without any source of income. It is an admitted fact, consequently, on an average the construction ban of 1 day culminates into roughly 10 days of delay in overall construction activity.

34. That due to the ban imposed by the above said authorities there was no progress at site consequent to which respondent's manpower, plant and machinery and other resources which stood fully mobilized at site were rendered idle thereby casting upon the respondent heavy financial losses due to the stagnancy of resources. It is also pertinent to mention herein that such bans majorly affect the projects which are near completion like the project in question. Hence, even after putting days and nights in completing the project, the delay occurred due to such circumstances which were beyond the control of the respondent company.
35. That the respondent after the completion of the project has duly applied to Director Town and Country Planning, Haryana, for issuance of the Occupation Certificate on 15.11.2019, however, the same was only issued on 06.03.2020 which further caused a delay of total 112 days on the part of Directorate of Town and Country Planning, Haryana, which in turn further lead to delay in the issuance of the possession letter to the buyers. As such the project got delayed for total no. of 263 days (approx.) for the reasons

above mentioned which were beyond the control of the respondent.

36. Further, it had been also agreed and accepted that in case of any default/delay in payment as per the schedule of payments as provided in annexure 1 to the flat buyer's agreement, the date of handing over of the possession shall be extended accordingly. Reference may be made to clause 8.1(b)(iii) of the flat buyer's agreement.

"8.1(b) (iii) The Flat Buyer(s) agrees and accepts that in case of any default/ delay in payment as per the Schedule of Payments as provided in Annexure 1, the date of handing over of the possession shall be extended accordingly solely on Developer's discretion till the payment of all outstanding amounts to the satisfaction of the Developer."

37. That the complainant has not fulfilled her obligation and has not even paid the instalments on time that had fallen due. Accordingly, no relief much less as claimed can be granted to the complainant.
38. That the complainant has failed to make payments in time in accordance with the terms and conditions as well as payment plan annexed with the allotment letter and flat buyer's agreement and as such the complaint is liable to be rejected. It is submitted that the complainant has till date not made the complete payment of demand raised on offer of possession. It is submitted that there is an outstanding amount of Rs. 8,77,678/- including interest payable by the complainant as on 08.07.2021.

39. That it is pertinent to mention here that the respondent, after having applied for grant of occupation certificate on 15.11.2019 in respect of the said tower, which had thereafter been even issued through memo dated 06.03.2020 and had offered possession to the complainant vide letter dated 29.02.2020 and e-mail dated 04.03.2020.
40. As per clause 8.2 (a) of the flat buyer's agreement the complainant should have taken the possession within 30 days. Reference may be made to clause 8.2 (a) of the flat buyer's agreement.

"8.2 Procedure for taking possession

(a) Subject to all other terms of this Agreement, the Developer shall offer in writing to the Flat Buyer(s) to take possession of the flat, within thirty (30) days from the date of issue of such notice. The Developer shall handover the possession of the said flat to the Flat Buyer(s) for his/her/their occupation and use in compliance with the provisions of clause 8.

41. However, the complainant has till date not taken the possession of the flat. it is pertinent to mention here that as per clause 9 of the flat buyer's agreement the complainant is liable to pay the holding charges @ Rs. 5/- per sq. ft. of the super area for the entire period of such delay. Reference may be made to clause 9 of the flat buyer's agreement.

"9. Holding Charges

Further it is agreed by the Flat Buyer(s) that in the event of the failure of the Flat Buyer(s) to take the possession of the said flat in the manner as aforesaid in clause 8.2, then the Developer shall have the option to cancel this Agreement and avail of the remedies as stipulated in Clause 15 of this Agreement or the

Developer may, without prejudice to its rights under any of the clauses of this Agreement and at its sole discretion, decide to condone the delay by the Flat Buyer(s) in taking over the said flat in the manner as stated in this clause on the condition that the Flat Buyer(s) shall pay to the Developer holding charges @ Rs. 5/- (Rupees Five only) per sq. ft. of the super area of the said flat per month for the entire period of such delay and to withhold conveyance or handing over for occupation and use of the said flat till the holding charges with applicable overdue interest as prescribed in this Agreement, if any, are fully paid.

42. That the complainant is also liable to pay the holding charges as per the flat buyer's agreement from 07.04.2020 amounting to Rs. 1,68,750/- (pending as on 7.07.2021) till the taking over of possession. It is pertinent to mention here that the complainant in order to escape her liability to pay the holding charges has filed the present false and frivolous complaint.
43. That the respondent has already completed the construction of the tower in which the unit allotted to the complainant is located. It is submitted that the said flat is complete in all regards as agreed. That large numbers of families, i.e., about 350, have already shifted after having taken possession in the said project. It is submitted that the complainant is deliberately dragging and avoiding taking over the possession of the said unit for the reasons best known to her.
44. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

45. The respondent has raised an objection regarding jurisdiction of authority to entertain the present complaint. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject-matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee 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 complainant at a later stage.

F. Findings on the objections raised by the respondent.

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

46. The respondent has raised a contention that the agreements that were executed prior to the implementation of the Act and rules shall be binding on the parties and cannot be reopened. Thus, both the parties being signatory to a duly documented FBA and the same was executed by the complainant out of his/her own free will and without any undue influence or coercion, the terms of FBA are bound by the terms and conditions so agreed between them.
47. The authority is of the view that 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."

48. 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."

49. 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, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

F.II Objection regarding format of the compliant

50. The respondent has further raised contention that the present complaint is not maintainable as the complainants have filed the present complaint before the adjudicating officer and the same is not in amended CRA format. The reply is patently wrong as the complaint has been addressed to the authority and not to the adjudicating officer. The authority has no hesitation in saying that the respondent is trying to mislead the authority by saying that the said complainant is filed before adjudicating officer. There is a prescribed proforma for filing complaint before the authority under section 31 of the Act in form CRA. There are 9 different headings in this form (i) particulars of the complainants have been provided in the complaint (ii) particulars of the respondent- have been provided in the complaint (iii)is regarding jurisdiction of the authority- that has been also mentioned in para 14 of the complaint (iv) facts of the case have been given at page no. 5 to 8 (v)relief sought that has also been given at page 10 of complaint (vi)no interim order has been prayed for (vii) declaration regarding complaint not pending with any other court- has been mentioned in para 15 at page 8 of complaint (viii) particulars of the fees already given on the file (ix)list of enclosures that have already been available on the file. Signatures and verification part is also complete. Although complaint should have been strictly filed in proforma CRA but in this complaint all the necessary details as required under CRA have been furnished along with necessary enclosures. Reply has also been filed. At this

stage, asking complainant to file complaint in form CRA strictly will serve no purpose and it will not vitiate the proceedings of the authority or can be said to be disturbing/violating any of the established principle of natural justice, rather getting into technicalities will delay justice in the matter. Therefore, the said plea of the respondent w.r.t rejection of complaint on this ground is also rejected and the authority has decided to proceed with this complaint as such.

G. Findings on the relief sought by the complainant.

G.I Handover possession: - Direct the respondent to deliver the possession of allotted unit as per the terms of buyer's agreement and in accordance with the law laid down in this regard.

51. The respondent has filed a copy of OC dated 06.03.2020 on page no. 59 of reply which shows that they have received the OC for unit in question. Further the respondent has offered possession to the complainant vide offer of possession dated 29.02.2020. The authority directs the complainant to take possession as it has already been offered by the respondent to the complainant on 29.02.2020, after paying outstanding dues, if any.

G.II Delay possession charges: - Direct the respondent to grant the 18 % interest on money advanced (for the delay caused in giving the delivery of possession) from the due date of delivery of possession i.e., 07.07.2015 till date

52. In the present complaint, the complainant intends to continue with the project and are seeking delay possession

charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

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."

53. Clause 8.1 of the flat buyer's agreement provides time period for handing over of possession and the same is reproduced below:

"8.1 Time of handing over the Possession

- (a) Subject to terms of this clause and subject to the Flat Buyer(s) having complied with all the terms and condition of this Agreement and not being in default under any if the provisions of this Agreement and complied with all the provisions, formalities, documentation etc., as prescribed by the Developer, the Developer proposes to handover the the possession of the Flat within a period of thirty six (36) months from the date of signing of this Agreement. However this period will be automatically stand extended for the time taken in getting the building plans sanctioned. The Flat Buyer(s) agrees and understands that the Developer shall be entitled to a grace period of 90 days, after the expiry of thirty six (36) months or such extended period (for want of building sanctioned plans), for applying and obtaining the Occupation Certificate in respect of the group housing complex."*

54. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favor of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of their rights accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.
55. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within period of 36 months from the date of execution of the FBA. In the present complaint, the date of execution of the FBA is 04.07.2012. Therefore, the due date of handing over possession comes out to be 04.07.2015. It is further provided

in agreement that promoter shall be entitled to a grace period of 90 days for applying and obtaining the occupancy certificate in respect of the group housing complex. As a matter of fact, from the perusal of occupation certificate dated 06.03.2020 it is implied that the promoter applied for occupation certificate only on 14.11.2019 which is later than 90 days from the due date of possession i.e., 04.07.2015. The clause clearly implies that the grace period is asked for applying and obtaining occupation certificate, therefore as the promoter applied for the occupation certificate much later than the statutory period of 90 days, he does not fulfil the criteria for grant of the grace period. As per the settled law one cannot be allowed to take advantage of his own wrongs. Accordingly, this grace period of 90 days cannot be allowed to the promoter.

56. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at prescribed rate. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under Rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest

at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

57. The legislature in its wisdom in the subordinate legislation under 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.
58. 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., 05.10.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
59. **Rate of interest to be paid by complainant for delay in making payments:** 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;"*

60. 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.
61. On consideration of the documents available on record and submissions made by both the parties, 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 8.1 of the apartment buyer's agreement executed between the parties on 04.07.2012, the possession of the subject unit was to be delivered within 36 months with a grace period of 90 days from the date of execution of the FBA i.e., 04.07.2012. Therefore, the due date of handing over possession is 04.07.2015. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 04.07.2015. The occupation certificate has been received by the respondent on 06.03.2020 and the possession of the subject unit was offered by the respondent to the complainant on 29.02.2020. Copies of the same have been placed on record. The authority

is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the flat buyer's agreement dated 04.07.2012 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the flat buyer's agreement dated 04.07.2012 to hand over the possession within the stipulated period.

62. Section 19(10) of the Act obligates the allottees to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. These 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 04.07.2015 till 29.02.2020 plus statutory period of 2 months as per the provision of section 19(10) of the Act.
63. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession at prescribed rate of interest i.e., 9.30% p.a. w.e.f. 04.07.2015 till 29.02.2020 plus two months i.e., 29.04.2020 as per provisions of section



18(1) of the Act read with rule 15 of the rules and section 19 (10) of the Act.

H. Directions of the authority

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

- i. The respondent is directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay from the due date of possession i.e., 04.07.2015 till 29.02.2020 plus two months i.e., 29.04.2020 to the complainant as per section 19 (10) of the Act.
- ii. The arrears of such interest accrued from 04.07.2015 till 29.04.2020 shall be paid by the promoter to the allottees within a period of 90 days from date of this order as per rule 16(2) of the rules.
- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

- v. The respondent shall not charge anything from the complainant which is not the part of the agreement. However, holding charges shall also not be charged by the promoter at any point of time even after being part of agreement as per law settled by the Hon'ble Supreme Court in civil appeal no. 3864-3889/2020 dated 14.12.2020.

65. Complaint stands disposed of.

66. File be consigned to registry.


(Samir Kumar)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.10.2021

JUDGEMENT UPLOADED ON 08.12.2021

HARERA
GURUGRAM