

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

<b>Complaint no.:</b>	<b>5139 of 2019</b>
<b>First date of hearing:</b>	<b>03.12.2019</b>
<b>Date of decision:</b>	<b>24.09.2021</b>

1. Col. Shekhar Arora,  
2. Mrs. Varinder Arora,  
R/o 174, MP Flats, South Avenue, New Delhi-11

**Complainants**

Versus

M/s Almond Infrabuild Pvt. Ltd.  
**Office address:** ATS Tower, Plot No. 16, Sector-135,  
Noida.

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal  
Shri Samir Kumar

**Member**  
**Member**

**APPEARANCE:**

Sushil Yadav (Advocate)  
M.K Dang (Advocate)

Complainants  
Respondent

**ORDER**

1. The present complaint dated 13.11.2019 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



		(as per payment plan attached with BBA at pg. 51 of complaint)	
12.	Total amount paid by the complainants	₹ 1,34,40,697/- (as calculated from cheques attached from pg. 52-55 & 61 of complaint)	
13.	Due date of delivery of possession as per clause 6.2 of the flat buyer's agreement 42 months from the date of execution of agreement.  [Page 30 of complaint]	10.05.2018 (42 months from date of execution of builder buyer agreement i.e., 10.05.2014)  <b>(Note: 6 months grace period allowed)</b> <i>3 years 4 months 14 days.</i>	
14.	Delay in handing over possession till the <del>offer of possession plus two months i.e., 09.10.2019</del> <i>date of order</i>	<del>1 year 4 months 29 days</del> <i>i.e. 21.09.2021</i>	
15.	Occupation certificate	09.08.2019 Tower-1 Pocket-A, Tower-2 Pocket-A, Tower-3 Pocket A, Tower-4 Pocket-A, Tower-5 Pocket-A, EWS Block, Community Building, Convenient Shopping in Community Building, Lower and	12.02.2019 Tower-3 to 5, EWS Block etc

the site to address the queries of the complainants. It appears that respondent has played fraud upon the complainants. The only intention of the respondent was to take payments for the tower without completing the work and handing over the possession on time. The respondent mala-fide and dishonest motives and intention cheated and defrauded the complainants. That despite receiving of 100% payment on time for all the demands raised by the respondent for the said flat and despite repeated requests and reminders over phone calls and personal visits of the complainants, the respondent has failed to deliver the possession of the allotted flat to the complainants within stipulated period.

- f. That it could be seen that the construction of the block in which the complainants flat was booked with a promise by the respondent to deliver the flat by 10.11.2017 but was not completed within time for the reasons best known to the respondent, which clearly shows that ulterior motive of the respondent was to extract money from the innocent people fraudulently and lastly the respondent sent the offer of possession letter on dated 09.08.2019 and the complainants as being responsible citizen paid the balance consideration with a protest letter dated 30.08.2019.
- g. That due to this omission on the part of the respondent the complainants have been suffering from disruption on his living arrangement, mental torture, agony and also continues to incur severe financial losses. This could have been avoided if the respondent had given possession of the flat on time. That as per clause 6.3 of the flat buyer agreement it was agreed by the

with his hard-earned huge amount of money and wrongfully gain himself and caused wrongful loss to the complainants.

**C. Relief sought by the complainants:**

4. The complainants have sought following reliefs:

a. Direct the respondent to delay possession charges interest @ 10.35% for every month of delay, from the due date of possession, till 09.08.2019.

b. Any other relief which this Hon'ble authority deems fit and proper may also be granted in favour of the complainants.

5. 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**

6. The respondent has contested the complaint on the following grounds:

a. That the present complaint is neither maintainable nor tenable by both law and facts. It is submitted that the present complaint is not maintainable before this hon'ble authority.

b. That the respondent is a reputed real estate company having immense goodwill, comprised of law abiding and peace-loving persons and has always believed in satisfaction of its customers. The respondent has developed and delivered several prestigious projects in and around NCR region such as ATS Greens-I, ATS Greens-II, ATS Village, ATS Paradiso, ATS Advantage Phase-I & Phase-II, ATS One Hamlet, ATS Pristine, ATS Kocoon, ATS Prelude & ATS Dolce and in these projects large number of families have

make timely payment towards the statutory charges of EDC/IDC and a reminder letter dated 16.04.2016 was issued by the respondent to the complainants. It is pertinent to mention herein that the complainants have even defaulted in making timely payment towards the HVAT which was demanded by them vide letter dated 08.12.2017 and accordingly the respondent was constrained to issue a reminder dated 09.08.2019 to the complainants

- f. That the possession of the unit was supposed to be offered to the complainants in accordance with the agreed terms and conditions of the buyer's agreement. It is submitted that clause 6.2 of the buyer's agreement states that:

*"The Developer endeavor to complete the construction of the Apartment within 42 months from the date of this Agreement (Completion Date). The company will send possession notice and offer possession of the Apartment to the Applicant as and when the company receives the occupation certificate from the competent authorities (ies).*

*Notwithstanding the same, the developer shall be entitled to an extension of time from the expiry of the Completion date if the Completion is delayed on account of any of the following reasons-*

*...*

*(d) Force majeure event or any other reason beyond the control of or unforeseen by the Developer, which may prevent or delay the developer in performing its obligations as specified in this Agreement."*

- g. That from the aforesaid terms of the apartment buyer's agreement, it is evident that only the construction was to be completed within a period of 42 months from the date of the agreement and the same would be extended on account of any force majeure condition, outside the control of the respondent as defined in the apartment buyer's agreement. The possession of the unit had to be offered to



12.10.2017. Hence the respondent was prevented from completing its work as per the sanctioned plans, providing common services in the said affected area, raising boundary wall etc. due to circumstances absolutely beyond its power and control i.e., force majeure. In the meanwhile, the respondent kept on completing the remaining project which was not affected by the stay order failing which further delay would have occurred. However, obviously the respondent could not have applied for occupation certificate for the project without providing the mandatory common services like storm water, sewerage line, irrigation and external fire hydrants, electrical works, and roads.

- i. That as soon as the restraint order dated 23.04.2014 was set aside, the respondent completed the construction of the project, and an application was made to the concerned authorities for the grant of occupation certificate vide application dated 19.03.2018. It is submitted that there is no default on the part of the respondent to complete the project and as per clause 6.2(d) of the apartment buyer's agreement, the respondent was entitled to an extension of time from the expiry of the completion date if the construction was delayed on account of a force majeure event. It is pertinent to mention herein that the occupation certificate has been granted by the concerned authorities on 09.08.2019. The respondent has already offered the possession of the unit to the complainants vide notice of possession dated 09.08.2019.
- j. That it is pertinent to mention herein that 90 days to complete the apartment after the remittance of the due amount by the



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.

### **E.II. Subject matter jurisdiction**

10. 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.

### **F. Findings on the objections raised by the respondent**

#### **F.I. Objection raised by the respondent regarding force majeure condition**

11. The respondent/promoter has raised the contention that the construction of the project was badly affected on account of a restraint order dated 23.04.2014 passed by the SDM Kapashera on the basis of a report submitted by halka patwari, Kapashera that the respondent was making encroachment on the gram sabha land and the order passed by the SDM Kapashera is covered under the ambit of the definition of 'Force Majeure Event' as stipulated in the mutually agreed terms of the apartment buyer's agreement. Furthermore, the case titled as *Dilbagh Singh vs GNCTD of Delhi* was ultimately dismissed vide order dated 12.10.2017. Hence the respondent was prevented from completing its work as per the sanctioned plans, providing common services in the said affected area, raising boundary wall etc. due to circumstances absolutely beyond its power and control i.e., force majeure. In the

*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."*

13. Clause 6.2 of the agreement to sell provides for handing over of possession and is reproduced below:

*"The Developer endeavour to complete the construction of the Apartment within 42 (forty-two) months from the date of this Agreement ("Completion Date"). The Company will send possession Notice and offer possession of the Apartment to the Applicant(s) as and when the Company receives the occupation certificate from the competent authority(ies).*

*Notwithstanding the same, the Developer shall be entitled to an extension of time from the expiry of the Completion Date if the Completion of Construction is delayed on account of any of the following reasons -*


*.....  
d) Force Majeure Event or any other reason (not limited to the reasons mentioned above) beyond the control of or unforeseen by the Developer, which may prevent or delay the Developer in performing its obligations as specified in this Agreement."*

14. 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 application, and the complainants 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 flat buyer agreement



17. 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.
18. 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., **24.09.2021** is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
19. 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;"*
20. 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.
21. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is

- actual handing over of possession*
- i.e., 10.05.2018 till the ~~offer of possession plus two months i.e.,~~  
~~09.10.2019.~~ *actual handing over of possession*
- ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iii. The rate of interest chargeable from the allottee 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 allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- iv. The respondent shall not charge anything from the complainants which is not the part of the agreement. However, holding charges shall not be charged by the promoter at any point of time even after being part of agreement as per law settled by Hon'ble Supreme Court in civil appeal no. 3864-3889/2020.
23. Complaint stands disposed of.
24. File be consigned to registry.

  
(Samir Kumar)

Member

**HARERA**  
GURUGRAM


*V.I - 3*  
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.09.2021

*Corrected vide order dated 19.01.2022*

  
*20.01.2022*



**HARERA**  
**GURUGRAM**

**HARYANA REAL ESTATE REGULATORY AUTHORITY**  
**GURUGRAM**

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

**PROCEEDINGS OF THE DAY**

Day and Date	Wednesday and 19.01.2022
Complaint No.	CR/5139/2019 Case titled as Col. Shekhar Arora V/s Almond infrabuild pvt. Ltd.

**Proceedings**

The hearing with regard to rectification application in the matter 5139/2019 against the order dated 24.09.2021 was listed for today i.e., 19.01.2022. Col. Shekhar Arora (complainant in person) along with his counsel Sh. Sushil Yadav Advocate were present whereas, an email dated 19.01.2022 is received from Dharendra Pandey (Senior Manager-Legal) of the respondent- promoter stating that the promoter does not have any objection in replacing "Offer of possession" with "Handing over of possession", in the order dated 24.09.2021 in the complaint no.5139/2019. (Copy annexed)

Going by the facts of the case and documents placed on record, the authority hereby allows the rectification of the order as recommended in the application dated 20.12.2021.

Dr. K.K Khandelwal  
Chairman

19.01.2022

Vijay Kumar Goel  
Member