

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

Complaint no. : 16 of 2021
First date of hearing: 23.02.2021
Date of decision : 24.09.2021

1. Tarun Jain
2. Kanupriya Jain
**Both R/O: - 322, Khajoor Road, Joshi Road, Near
Ajmal Khan Park, Karol Bagh, Central Delhi, Delhi -
110005**

Complainants

Versus

1. Ansal Housing Limited
**Regd. office: - Ansal Plaza, 2nd floor, Sector - 1,
Vaishali, Ghaziabad, Uttar Pradesh - 201010**
2. Samyak Projects Pvt. Ltd.
**Regd. office: - Ansal Plaza, 2nd floor, Sector - 1,
Vaishali, Ghaziabad, Uttar Pradesh - 201010**

Respondents

CORAM:

Shri Samir Kumar
Shri Vijay Kumar Goyal

Member
Member

APPEARANCE:

Ms. Priyanka Agarwal
Ms. Meena Hooda

Advocate for the complainants
Advocate for the respondents

ORDER

1. The present complaint dated 12.01.2021 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities

and functions under the provision of the act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

S.No.	Heads	Information
1.	Project name and location	"Ansal Heights", Sector 92, Gurugram.
2.	Project area	10.563 acres
3.	Nature of the project	Residential project
4.	DTCP license no. and validity status	76 of 2010 dated 01.10.2010 valid till 30.09.2020
5.	Name of licensee	Jsg builders pvt. ltd. and others
6.	HRERA registered/ not registered	Not Registered
7.	Unit no.	D - 402 [Page 22 of complaint]
8.	Unit measuring	1565 sq. ft. [Page 22 of complaint]
9.	Date of execution of buyer's agreement	30.07.2012 [Page 19 of complaint]
10.	Payment plan	Construction linked payment plan [Page 36 of complaint]
11.	Total consideration	Rs.47,91,821.25/- [Page 36 of complaint]
12.	Total amount paid	Rs.4,916,896.79/- [As statement of accounts on page no. 38 of the complaint]

13.	Due date of delivery of possession as per clause 29 of the said agreement i.e. 36 months from the date of execution of agreement or within 36 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is alter subject to timely payment of all the dues by buyer and subject to force majeure circumstances as described in clause 30 [Page 28 of complaint]	30.07.2015 [Calculated from date of execution of agreement i.e.; 30.07.2012] [Note: Grace period is not allowed]
14.	Occupation Certificate	Not obtained
15.	Offer of possession	Not offered
16.	Delay in handing over possession till 24.09.2021 i.e. till date of order	6 years 1 month and 25 days

B. Facts of the complaint

1. That the complainants are a law-abiding citizen and consumer who have been cheated by the malpractices adopted by the respondents is stated to be a builder and is allegedly carrying out real estate development. Since many years, the complainants being interested in the project because it was a housing project and the complainant had need an own Home for his family.
2. That the complainants were subjected to unethical trade practice as well as subject of harassment, flat buyer agreement clause of escalation cost, many hidden charges which will forcedly imposed on buyer at the time of possession as tactics and practice used by builder guise of a biased, arbitrary and one sided.
3. That the respondents, to dupe the complainants in their nefarious net

even executed flat buyer agreement signed between m/s ansal housing ltd. and Mr. Pankaj Jain and finally respondents endorsed the said agreement in favor of complainants (Mr. Tarun jain & Mrs. Kanupriya Jain). by this endorsement complainant became legal allottee and purchaser of the said property. respondents create a false belief that the project shall be completed in time bound manner and in the garb of this agreement persistently raised demands due to which they were able to extract huge amount of money from the complainants.

4. That it is pertinent mentioned here that according to the statement the complainants paid a sum of rs 4916896/- (including EDC, IDC ,tax, etc) to the respondents till now and before this builder was demanded more than 90% amount without doing appropriate work on the said project, which is illegal and arbitrary.
5. That as per section 19 (6) the real estate (regulation and development) act, 2016 (hereinafter referred to as the act) complainants have fulfilled his responsibility in regard to making the necessary payments in the manner and within the time specified in the said agreement. therefore the complainants herein are not in breach of any of its terms of the agreement.
6. That the complainants were sanctioned home loan of rupees 2500000/- from axis **bank** which was taken for buying this flat, and pre-emi amount rs.16628/-created extra financial burden on complainants and still complainants are paying emi of home loan.
7. That complainants have paid all the installments timely and deposited Rs. 4916896/- (Including EDC , IDC , Tax, etc) that respondents in an endeavor to extract money from allottees devised a payment plan under which respondents linked more than 35 % amount of total paid against as an advance Rest 60% amount linked with the construction

of super structure only) of the total sale consideration to the time lines, which is not depended or co-related to the finishing of flat and internal development of facilities amenities and after taking the same respondents have not bothered to any development on the project till date as a whole project not more than 40 % and in term of particular tower just built a super structure only. extracted the huge amount and not spend the money in project is illegal and arbitrary and matter of investigation.

8. That the builder was started construction work almost 8 year back still respondents want to more years to complete the project. 8- 10 year long period make adverse effect on construction quality of project. That as the delivery of the apartment was due on Jan 2016, which was prior to the coming into of force of the GST act, 2016 i.e. 01.07.2017, it is submitted that the complainants are not liable to incur additional financial burden of GST due to the delay caused by the respondents. Therefore, the respondents should pay the GST on behalf of the complainants but just reversed builder collect the GST from complainants and enjoy the input credit as a bonus, this is also matter of investigation.
9. That The respondents has indulged in all kinds of tricks and blatant illegality in booking and drafting of FBA with a malicious and fraudulent intention and caused deliberate and intentional huge mental and physical harassment of the complainants and his family and cruelly been dashed the savored dreams, hopes and expectations of the complainant to the ground and the complainant is eminently justified in seeking return of the entire money with interest.
10. That the complainants communicate with respondents and asked for delayed possession respondents show problem of financial crunch other

side builder extracted huge amount from complaints and given loan to others, and project development abundant create suspicion on builder intention. **In similar caseNeelkamal Realtors Suburban Pvt. Ltd. and anr.vs UOI and Ors (W.P 2737 of 2017**

Wherein the Bombay HC bench held that :

Para 182 *"The real estate sector has largely been opaque, with consumers often unable to procure complete information, or enforce accountability against builders and developers in the absence of effective regulation. The biggest fallout affecting the sector has been (1) the delay in project completion; (2) diversion of funds collected from buyers, (3) one-sided contracts due to power asymmetry; (4) reneging on contractual commitments by both the developers and the buyers; and (5) constraints in financing and investment options available to the sector, thereby affecting os-wp-2737-17 & ors-RERA-JT.doc its long-term growth"*

Para181..... *"There was no accountability as to entity or persons responsible and/or liable for delivering on several projects that were advertised and in respect of which amounts had been collected from individual purchasers. What was promised in advertisements/broachers, such as amenities, specifications of premises etc. was without any basis, often without plans having been sanctioned, and was far from what was finally delivered. Amounts collected from purchasers were either being diverted to other projects, or were not used towards development at all, and the developer would often be left with no funds to finish the project despite having collected funds from the purchasers. For a variety of reasons including lack of funds, projects were stalled and never completed and individual purchasers who had invested their life-savings or had borrowed money on interest, were left in the lurch on account of these stalled projects. Individual purchasers were often left with no choice but to take illegal. os-wp-2737-17 & ors-RERA-JT"*

11. That keeping in view the snail paced work at the construction site and half-hearted promises of the respondents, the chances of getting physical possession of the assured unit in near future seems bleak and

that the same is evident of the irresponsible and desultory attitude and conduct of the respondents, consequently injuring the interest of the buyers including the complainants who have spent his entire hard earned savings in order to buy this home and stands at a crossroads to nowhere. The inconsistent and lethargic manner, in which the respondents conducted its business and their lack of commitment in completing the project on time, has caused the complainants great financial and emotional loss.

12. That the complainants have taken the loan for buying this unit and due to delay in possession complainant also lost exemption in income tax which is available only if builder given the possession within 5 year from the date of loan sanction. **Under Section 80 c and 24 of Income Tax Act 1961.**

13. It is submitted that the cause of action to file the instant complaints have occurred within the jurisdiction of this hon'ble authority as the apartment which is the subject matter of this complaint is situated in sector 92, Gurugram which is within the jurisdiction of this hon'ble authority.

C. Relief claimed by the complainants

(i) Pass an order for delay interest on paid amount of Rs.4916896/- from 30th January, 2016 along with pendent lite and future interest till actual possession thereon @ 24%.

(ii) To restrain the respondents from raising any fresh demand and increasing the liability of the complainants.

(iii) We request to hon'ble regulatory authority to direct the respondents to get the occupation certificate and immediately hand over the legal

physical possession of unit in habitable condition with all amenities mentioned in brochure.

(iv) We request to hon'ble regulatory authority for pass the order for forensic audit of builder because builder extracts more than 90% but project still incomplete more than 70 %.

(v) We request the hon'ble regulatory authority to direct the respondents to quash the one sided clauses mention in BBA.

(vi) To pass an order for payment of GST amount levied upon the complainants and taken the benefit of input credit by builder.

D. Reply by the respondents

14. That the respondents have contested the complaint on the following grounds :

- i. 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. the complainants has filed the present complaint seeking interest and compensation. it is respectfully submitted that complaint pertaining to interest, compensation and refund are to be decided by the adjudicating officer under section 71 of the real estate (regulation and development) act, 2016 (hereinafter referred to as "the act" for short) read with rule 29 of the Haryana real estate (regulation and development) rules, 2017, (hereinafter referred to as "the rules") and not by this hon'ble authority. the present complaint is liable to be dismissed on this ground alone.
- ii. That even otherwise, the complainants has no locus-standi and cause of action to file the present complaint. the present complaint is based on an erroneous interpretation of the provisions of the act as well as an incorrect understanding of the terms and conditions

of the allotment letter/buyer's agreement dated 30.09.2011, which is evidentiary from the submissions made in the following paragraphs of the present reply.

- iii. That the respondents are 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 respondents through its duly authorized representative named mr. vaibhav chaudhary whose authority letter is attached herewith. the above said project is related to licence No.76 of 2010 dated 01-10.2010 received from DTCP, Chandigarh.
- iv. It is submitted that complainants prior to approaching the respondents had conducted extensive and independent inquiries regarding the project and it was only after the complainants were being fully satisfied with regard to all aspects of the project, including but limited to the capacity of the respondents to undertake development of the same and the complainants took an independent and informed decision to purchase the unit, uninfluenced in any manner.
- v. It is pertinent to mention here that despite there being a number of defaulters in the project, the respondents 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 respondents to the authority.
- vi. That without prejudice to the aforesaid and the rights of the respondents, it is submitted that the respondents would have handed over the possession to the complainants within time had

there been no force majeure circumstances beyond the control of the respondents, there had been several circumstances which were absolutely beyond and out of control of the respondents 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 thereby restraining the excavation work causing air quality index being worst, may be harmful to the public at large without admitting any liability. Apart from these the demonetization is also one of the main factor to delay in giving possession to the home buyers as demonetization caused abrupt stoppage of work in many projects. The sudden restriction on withdrawals led the respondents unable to cope with the labour pressure. however, the respondents is carrying its business in letter and spirit of the builder buyer agreement as well as in compliance of other local bodies of Haryana government.

- vii. That the respondents are carrying his business in letter and spirit of the builder buyer agreement but due to covid"19 the lockdown was imposed throughout the country in march, 2020 which badly affected the construction and consequently respondents was not able to handover the possession on time as the same was beyond the control of the respondents.
- viii. That the present complaint filed by the complaint, who himself allegedly claiming the allottee, therefore, the complainants are not entitled to have any relief which this hon'ble authority in terms of RERA Act, 2016 which provides rights and duties of allottees.

Though the act is pro-consumer, yet it has struck a balance by specifying the duties of the Allottees. Allottees who do not pay their instalments, maintenance dues in time will also be subjected to the rigour of this act. Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.

- ix. That it is submitted that the complaint is not maintainable or tenable under the eyes of law as the complainants has not approached this hon'ble authority with clean hands and has not disclosed the true and material facts relates to this case of complaint. The complainants, thus, has approached the Hon'ble Authority with unclean hands and also has suppressed and concealed the material facts and proceedings which have direct bearing on the very maintainability of purported complaint and if there had been disclosure of these material facts and proceedings the question of entertaining the present complaint would have not arising in view of the case law titled as S.P. Chengalvaraya Naidu Vs. Jagan Nath reported in 1994 (1) SCC Page-1 in which the Hon'ble Apex Court of the land opined that non-disclosure of material facts and documents amounts to a fraud on not only the opposite party, but also upon the hon'ble authority and subsequently the same view was taken by even Hon'ble National Commission in case titled as Tata Motors Vs. Baba Huzoor Maharaj bearing RP No.2562 of 2012 decided on 25.09.2013.

- x. That without admitting or acknowledging the truth or legality of the allegations advanced by the complainants and without prejudice to the contentions of the respondents, it is respectfully submitted that the provisions of the act are not retrospective in nature. The provisions of the act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the act. It is further submitted that merely because the act applies to ongoing projects which registered with the authority, the act cannot be said to be operating retrospectively. The provisions of the act relied upon by the complainants seeking refund, interest and compensation cannot be called into aid in derogation and ignorance of the provisions of the builder buyer's agreement. It is further submitted that the interest for the alleged delay demanded by the complainants are beyond the scope of the buyer's agreement. The complainants cannot demand any interest or compensation beyond the terms and conditions incorporated in the builder buyer's agreement. However, in view of the law as laid down by the Hon'ble Bombay High court in case titled as Neelkamal Realtors Suburban Pvt. Ltd. Vs. Union of India published in 2018(1) RCR (C) 298, the liberty to the promoter/developer has been given U/s 4 to intimate fresh date of offer of possession while complying the provision of Section 3 of RERA act as it was opined that the said act named RERA is having prospective effect instead of retrospective.
- xi. That it is also a conceded and admitted fact that the project pertaining to the present complaint has not yet been registered with RERA and as such the hon'ble authority lacks jurisdiction to entertain the present complaint.

- xii. That the respondents reserves its right to file additional reply and documents, if required, assisting the hon'ble authority in deciding the present complaint at the later stage.
- xiii. That it is submitted that several allottees, have defaulted in timely remittance of payment of instalment which was an essential, crucial and an indispensable requirement for conceptualization 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 respondents. The respondents, 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.
- xiv. The central government levied such taxes, which are still beyond the control of the respondents, it is specifically mentioned in clause 7 & 8 of the builder buyer's agreement, vide which complainants were agreed to pay in addition to basic sale price of the said unit he/she/they is/are liable to pay EDC, IDC together with all the applicable interest, incidental and other charges inclusive of all interest on the requisite bank guarantees for EDC, IDC or any other statutory demand etc. The complainants further agreed to pay his proportionate share in any future enhancement/additional demand raised by authorities for these charges even if such additional demand raise after sale deed has been executed.
15. Copies of all the relevant documents have been duly 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

The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

16. 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.

E.II Subject matter jurisdiction

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

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA

dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.

Section 34-Functions of the Authority:

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

17. So, in view of the provisions of the act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondents

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

18. Another contention of the respondents are that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the apartment buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the act or the said rules has been executed inter se parties. 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."

19. 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.”

20. 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 Objections regarding force majeure conditions such as water extraction, NGT and COVID-19

The respondents-promoters raised the contention that the construction of the project was delayed due to force majeure conditions such as difficulty in water extraction, NGT orders and Covid-19 but all pleas advanced in this regard are devoid of merit. Various orders passed by different authorities were for short duration. There has been no order continuously barring the construction of the project. And also it is pertinent to mention here that lockdown due to Covid-19 outbreak falls much later than the promised due date of possession. Thus, the respondents-promoters cannot be given any

leniency on basis of aforesaid reasons and it is a well settled principle that a person cannot take benefit of his own wrong. Thus it is absolutely wrong and emphatically denied.

21. Admissibility of delay possession charges at prescribed rate of interest: The complainants are seeking delay possession charges at the rate of 24% p.a. 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.

22. 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.

23. 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%.

24. The definition of term 'interest' as defined under section 2(z) 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;"

25. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 9.30% by the respondents/promoters which is the same as is being granted to the complainants in case of delayed possession charges.

26. 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 respondents are 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 29 of the agreement executed between the parties on 30.07.2012, the



stipulated time i.e., by 30.07.2015. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession is 30.07.2015. The respondents have failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondents/promoters to fulfil its obligations and responsibilities as per the 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 respondents are established. As such the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 30.07.2015 till the handing over of the possession, at prescribed rate i.e., 9.30 % p.a. as per proviso to section 18(1) of the act read with rule 15 of the rules.

C. Directions of the authority

27. 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 respondents 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., 30.07.2015 till the date of handing over possession, before 10th of each subsequent month as per proviso to section 18(1) of the act read with rule 15 of the rules.
- ii. The arrears of such interest accrued from 30.07.2015 till the date of order by the authority shall be paid by the promoter to the allottee

within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10th of the subsequent month as per rule 16(2) of the rules.

- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iv. 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 respondents/promoters 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.
 - v. The respondents shall not charge anything from the complainants which is not the part of the agreement.
28. Complaint stands disposed of.
29. File be consigned to registry.

(Samir Kumar)
Member

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.09.2021
Judgement uploaded on 20.12.2021