

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

Complaint no. : 527 of 2021

First date of hearing: 19.03.2021

Date of decision : 24.09.2021

1. Siddhant Shandilya

2. Rashmi Sinha

R/O -Jagat Narain Road, Kadamkuan,
Patna, Bihar - 800003

Complainants

Versus

Ansal Housing Limited

Address:- 2nd Floor, Ansal Plaza, Sector - 1,
Near Vaishali Metro Station, Vaishali,
Ghaziabad, Uttar Pradesh - 201010

Respondent

CORAM:

Shri Samir Kumar

Member

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Ms. Priyanka Agarwal

Advocate for the complainants

Ms. Meena Hooda

Advocate for the respondent

ORDER

1. The present complaint dated 02.02.2021 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 them.

A. Unit and project related details

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

S.No.	Heads	Information
1.	Project name and location	Estella, Sector-103, Gurugram
2.	Project area	15.743 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	17 of 2011 dated 08.03.2011 valid upto 07.03.2015
5.	Name of licensee	Rattan Singh and 9 others
6.	RERA Registered/ not registered	Not registered
7.	Unit no.	K - 0607
8.	Unit measuring	1245sq. ft.
9.	Date of execution of Apartment Buyers Agreement	18.08.2012 (Page 24 of the complaint)
10.	Due date of delivery of Possession as per clause 30 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	18.08.2015 (Grace period is not allowed)

	construction, whichever is later subject to timely payment of all the dues by buyer and subject to force majeure circumstances as described in clause 31	
11.	Total sale consideration	Rs. 42,46,750/- (As per payment plan page no. 44 of the complaint)
12.	Amount received from the complainants	Rs. 42,64,021/- (As stated by complainants on pg. 19)
13.	Delay in handing over possession till the date of decision i.e 24.09.2021	6years, 1 month and 6 days
14.	Occupation Certificate	Not received
15.	Offer of possession	Not offered

B. Facts of the complaint

1. That the complainants are law-abiding citizen and consumer who has been cheated by the malpractices adopted by the respondent 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 complainants needed 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 be forcedly imposed on buyer at the time of possession as tactics and practice used by builder guise of a biased, arbitrary and one sided. That the executed builder buyer agreement between

respondent and complainants mentioned in developer's representations, DTCP given the licence 17 of 2011 dated 08.03.2011.

3. The respondent 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. It is submitted that as per clause 23 of the flat buyer agreement the buyer was charged very high interest rate i.e. 24% per annum, compounded quarterly. Furthermore, according to clause 24 of agreement if buyer fails to pay due instalments within stipulated period, the respondent could cancel the agreement and forfeit the earnest money, without giving any notice to buyer which in itself is perverse in nature.
5. The complainants further submits that as per clause 35, the developer/ respondent had very cleverly and specifically accepted a meagre liability to pay Rs. 5/- per sq. ft. per month on the super area for the delay in offering of possession of the apartment beyond 36 months.
6. That the total cost of the said flat is Rs.4297534/- including EDC,IDC,PLC, CLUB FEE,CESS, VAT and one car parking and sum of Rs. 4264021.79/-paid by the complainants in time bound manner
7. It is pertinent to mention that complainants booked the said apartment on08.01.2011. The complainants were lured into paying Rs. 4264021.79/- within a short period of time. This amount constituted more than 95% of the total sum taken from

the complainants within 5 years . This amount was taken by the respondent through fraudulent means by erecting a bare structure within 2015. The respondent declined to complete the project after collecting money and there has been little progress in construction from 2015 onwards. This indicates the nefarious design of the builder to take about more than 95% of the total sum from complainants through false promises and threats, and stopped doing work on the said project after collecting money, which is illegal and arbitrary.

8. That as per section 19 (6) the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act) complainants have fulfilled their responsibility in regard to making the necessary payments in the manner and within the time specified in the said agreement. Therefore the complainants herein is not in breach of any of its terms of the agreement.
9. That complainants have paid all the instalments timely and deposited Rs.4264021.79/- that respondent in an endeavor to extract money from allottees devised a payment plan under which respondent 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 correlated to the finishing of flat and internal development of facilities amenities and after taking the same respondent have not bothered to any development on the project till date as a whole project not more than 50 % 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.

10. That complainants entered into flat buyer agreement on 18.08.2012 and as per flat buyer agreement, respondent/ builder are liable to offer possession on before 18.08.2015 so far (FBA clause no.30).
11. That the builder started construction work more than 8 year back and quickly erected a bare structure within two and half years with the sole intention of taking money from buyer on construction-linked instalments. Respondent/Builder are not completing the project and intend to delay for undefined times to complete the project. The 5 years long period has made adverse effect on construction quality of project.
12. That as the delivery of the apartment was due on 18.08.2015 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 respondent. Therefore, the respondent should pay the GST on behalf of the complainants but just reversed builder collected the GST from complainants and enjoy the input credit as a bonus, this is also matter of investigation.
13. That the respondent has indulged in all kinds of tricks and blatant illegality in taking money through booking and drafting of flat buyer agreement with a malicious and fraudulent intention and caused deliberate and intentional huge mental and physical harassment of the complainants and his family.

14. That the complainants communicated with respondent and asked for delayed possession ,respondent showed problem of financial crunch other side builder extracted huge amount from complainants and given loan to others, and project development abundant create suspicion on builder intention.
15. Complainants wrote several emails to respondent and requested for possession but the respondent did not bother to respond till date.
16. That due to the malafide intentions of the respondent and non-delivery of the flat unit the complainants have accrued huge losses on account of the future of the complainants and their family are rendered dark as the planning with which the complainants invested his hard earned monies have resulted in sub-zero results and borne thorns instead of bearing fare fruits. Due to delay in possession complainants has incurred huge financial and mental harassment month after month complainants visited respondent's office several times and requested for possession but the respondent did not bother to respond till date.
17. That keeping in view the snail paced work at the construction site and half-hearted promises of the respondent, 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 respondent, consequently injuring the interest of the buyers including the complainants who have spent his entire hard earned savings and taken interest bearing loan in order to buy

this home and stands at a crossroads to nowhere. The inconsistent and lethargic manner, in which the respondent conducted its business and their lack of commitment in completing the project on time, has caused the complainants great financial and emotional distress and loss.

18. It is submitted that the cause of action to file the instant complaint has occurred within the jurisdiction of this Hon'ble authority as the apartment which is the subject matter of this complaint is situated in Sector 103 Gurugram which is within the jurisdiction of this Hon'ble authority.

C. Relief sought by the complainants: -

19. The relief claimed by the complainants :-

(i) To direct the respondent to pay delay interest on paid amount of Rs. 4264021/-of 24% to till the handing over the physical possession. As per flat buyer agreement builder liable to offer possession on before 18.08.2015. (FBA Clause no.30).

(ii) To direct the respondent to complete the project immediately and hand over the possession of the flat with all basic amenities which mention in brochure.

(iii) To pass the order for forensic audit of builder because builder extracts more than 100% but project still incomplete

(iv) To direct the respondent to quash the one-sided clauses from flat buyer agreement.

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

20. 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

- I. The answering respondent is a developer and has built multiple residential and commercial buildings within Delhi/NCR with a well established reputation earned over years of consistent customer satisfaction.
- II. That the complainants had approached the answering respondent for booking an flat no. K607 in an upcoming project Estella, Sector 103, Gurugram. Upon the satisfaction of the complainants regarding inspection of the site, title, location plans, etc. an agreement to sell dated 18.08.2012 was signed between the parties.
- III. That the current dispute cannot be governed by the RERA Act, 2016 because of the fact that the builder buyer agreement signed between the complainants and the answering respondent was in the year 2012. It is submitted that the regulations at the concerned time period would regulate the project and not a subsequent legislation i.e. RERA Act, 2016. It is further submitted that Parliament would not make the operation of a statute retrospective in effect.
- IV. That the complaint specifically admits to not paying necessary dues or the full payment as agreed upon under the builder buyer agreement. It is submitted that the complainants cannot be

allowed to take advantage of his own wrong.

- V. That even if for the sake of argument the averments and the pleadings in the complaint are taken to be true, the said complaint has been preferred by the complainants belatedly. The complainants had admittedly filed the complaint in the year 2021 and the cause of action accrue on 18.08.2015 as per the complaint itself. Therefore, it is submitted that the complaint cannot be filed before the HRERA Gurugram as the same is barred by limitation.
- VI. That the questions of compensation and interest are questions that cannot be decided by the Adjudicating Officer as per the judgment of the Hon'ble High Court of Punjab and Haryana at Chandigarh. It is submitted that even for the sake of argument the complaint is taken to be true the complaint cannot lie before the adjudicating officer. It is submitted that the said judgment is pending consideration before the Hon'ble Supreme Court of India. It is further submitted that until the said question is given a quietus by the Apex Court the said matter be kept pending to avoid any possibility of a contrary/conflicting decision.
- VII. That even if the complaint is admitted to be true and correct, the agreement which was signed in the year 2012 without coercion or any duress cannot be called in question today. It is submitted that the builder buyer agreement provides for a penalty in the event of a delay in giving possession. It is submitted that clause 35 of the said agreement provides for Rs.

5/ sq foot per month on super area for any delay in offering possession of the unit as mentioned in clause 30 of the agreement. Therefore, the complainants will be entitled to invoke the said clause and is barred from approaching the Hon'ble commission in order to alter the penalty clause by virtue of this complaint more than 8 years after it was agreed upon by both parties.

- VIII. That the complaint itself discloses that the said project does not have a RERA approval and is not registered. It is submitted that if the said averment in the complaint is taken to be true, the Hon'ble authority does not have the jurisdiction to decide the complaint.
- IX. That the respondent had in due course of time obtained all necessary approvals from the concerned authorities. It is submitted that the permit for environmental clearances for proposed group housing project for Sector 103, Gurugram, Haryana on 20.02.2015. Similarly, the approval for digging foundation and basement was obtained and sanctions from the department of mines and geology were obtained in 2012. Thus, the respondents have in a timely and prompt manner ensured that the requisite compliances be obtained and cannot be faulted on giving delayed possession to the complainants.
- X. That the law on the scope of the functions to be discharged by the adjudicating authority is clear. It is submitted that the adjudicating authority is competent to decide compensation and not adjudicate on the merits of the claim.

- XI. That the answering respondent has adequately explained the delay. It is submitted that the delay has been occasioned on account of things beyond the control of the answering respondent. It is further submitted that the builder buyer agreement provides for such eventualities and the cause for delay is completely covered in the said clause. The respondent ought to have complied with the orders of the Hon'ble High Court of Punjab and Haryana at Chandigarh in CWP No. 20032 of 2008, dated 16.07.2012, 31.07.2012, 21.08.2012. The said orders banned the extraction of water which is the backbone of the construction process. Similarly, the complaint itself reveals that the correspondence from the answering respondent specifies force majeure, demonetization and the orders of the Hon'ble NGT prohibiting construction in and around Delhi and the COVID -19 pandemic among others as the causes which contributed to the stalling of the project at crucial junctures for considerable spells.
- XII. That the answering respondent and the complainants admittedly have entered into a builder buyer agreement which provides for the event of delayed possession. It is submitted the clause 31 of the builder buyer agreement is clear that there is no compensation to be sought by the complainants/prospective owners in the event of delay in possession.
- XIII. That the answering respondent has clearly provided in clause 35 the consequences that follow from delayed possession. It is submitted that the complainants cannot alter the terms of the

contract by preferring a complaint before the Hon'ble HRERA Gurugram.

XIV. That the answering respondent has not appreciated the fact that the downward spiral in property prices has propelled him to file a complaint before the HRERA, Gurugram. It is submitted that a downward spiral cannot be a reason to approach the HRERA and seek a refund at 24% interest.

21. 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 based on these undisputed documents and submission made by the complainants

E. Jurisdiction of the authority

22. 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

i. 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.

- ii. 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 respondent

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

1. Another contention of the respondent 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."*

2. 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."

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 delayed payments, demonetization, and various ban by NGT.

The respondent/promoter raised the contention that the construction of the project was delayed due to several unforeseeable events which were beyond the reasonable control of the respondent which have materially and adversely affected the timely completion of the project and are covered under force majeure conditions such as non-payment of instalment by different allottee of the project, demonetisation, inclement weather conditions viz. Gurugram. Moreover, the outbreak of the deadly Covid-19 virus has resulted in significant delay in completion of the construction of the projects in India and the real estate industry in NCR region has suffered tremendously. The outbreak resulted in not only disruption of the supply chain of the necessary materials but also in shortage of the labor at the construction sites as several laborer's have migrated to their respective hometowns. The Covid-19 outbreak which has been

classified as "pandemic" is an Act of God and the same is thus beyond the reasonable apprehension of the respondent. The reasons given by the respondent are supported by the documentary proof of the same. Moreover, the due date of possession was in the year 2015 and any situation or circumstances which could have a reason for not carrying out the construction activities in the project prior to this date due are not allowing to be taken into consideration. While considering whether the said situations or circumstances were in fact beyond the control of the respondent but he could complete the project well within the time and hence the respondent is not entitled to force majeure clause 31, the authority takes into consideration all the pleas taken by the respondent to plead the force majeure condition. However as far as the delay in payment of instalments by many allottees or regarding the dispute with contractor is concerned the respondent has not given any specific details about the same. With regard to NGT order, demonetization of Rs. 500/- and Rs. 1000/- currency notes and heavy rainfall in Gurugram are concerned these events are stated to have taken place in the year 2015 and 2016 i.e., the prior to due delivery of possession of the apartment to the complainants. Accordingly, authority holds that the respondent is not entitled to invoke clause 31 for delay with force majeure condition.

G. Findings on the reliefs sought by the complainants

Reliefs sought by the complainants:

- i. Direct the respondent complete the project immediately and hand over the possession of the flat with all basic amenities which mentioned in brochure
- ii. In the present complaint, the complainants intends to continue with the project and is seeking delay interest on paid amount of 4264021 at 24%, p.a., 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.”

- iii. Clause 30 of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

“30. POSSESSION

Time of handing over the possession

The developer shall offer possession of the unit anytime, within a period of 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 later subject to timely payment of all the dues by the buyer and subject to force majeure circumstances as described in clause 31. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 36 months as above in offering the possession of the unit.”

- iv. As per clause 30 of buyer's agreement the respondent-promoter has proposed to handover the possession of the subject apartment within a period of 36 months from the execution of the agreement

or the date of approval of and sanctions necessary for commencement of construction, whichever is later subject to timely payment by the buyer(s) and subject to force majeure circumstances. Further, the authority in the present case observed that, the respondent has misused its powers and stated an ambiguous clause where, possession is subject to various approvals and sanctions. This practice is not admissible. There must be specific description as to from what or which approval period of due date of possession is to be calculated. Moreover, in the present case buyer's agreement was executed on 18.08.2012 and no date of any approval such building plan approvals and environment clearance are placed on record either by the complainants or by the respondent. Mere starting of construction does not fulfil the criteria specified under clause 30, as there is no fact that can prove that construction was started as and when required sanctions or approvals are obtained. Therefore, in present case due date of possession is calculated from the date of agreement between the parties i.e.; 18.08.2012, which comes out be 18.08.2015.

- v. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment by 18.08.2015 and further provided in agreement that promoter shall be entitled to a grace period of 6 months. Such grace period of 6 months is asked for offer of possession to the allottee(s). As a matter of fact, the

promoter has not obtained the occupation certificate till now and thus, no offer of possession can be made. As per the settled law one cannot be allowed to take advantage of his own wrong. Accordingly, this grace period of 6 months cannot be allowed to the promoter at this stage.

- vi. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prescribed rate. 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.

- vii. 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.
- viii. 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%.
- ix. 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 allottees, 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;"*
- x. 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.

- xi. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 30 of the agreement executed between the parties on 18.08.2012, the possession of the subject apartment was to be delivered within stipulated time i.e., by 18.08.2015. 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 18.08.2015. The respondent has failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 18.08.2015 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.

H. Directions of the authority

23. 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., 18.08.2015 till the date of handing over possession, 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 18.08.2015 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 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(z a) of the Act.

(v)The respondent shall not charge anything from the complainants which is not the part of the agreement.

24. Complaint stands disposed of.

25. File be consigned to registry.

(Samir Kumar)
Member

(Vijay Kumar Goyal)
Member

Dated: 24.09.2021

Judgement uploaded on 20.12.2021