

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

Complaint no.:	2053 of 2021
First date of hearing:	01.07.2021
Date of decision:	24.09.2021

1. Mr. Raghunandan Sharma 2. Mrs. Sheenoo Sharma 3. Mr. Meenoo harma R/o C-9/1, Ground Floor, Ardee City, Sector-52, Gurugraon 122012 Haryana.	<b>Complainants</b>
Versus	
Ansal Housing and Construction Pvt. Ltd. Office address: 606, 6 <sup>th</sup> , Indraprakash, 21, Barkhamba Road, New Delhi- 110001.	<b>Respondent</b>

<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
Shri Samir Kumar	<b>Member</b>

<b>APPEARANCE:</b>	
Gaurav Rawat	Advocate for Complainants
Meena Hooda	Advocate for Respondent

**ORDER**

1. The present complaint dated 13.04.2021 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 as provided under the provision of the Act or the Rules and regulations made there under or to the allottees 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:

Sno.	Heads	Information
1.	Project name and location	"Ansal Estella", Sector-103, Gurugram
2.	Project area	15.743 acres
3.	Nature of the project	Residential
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 registration details	Not registered
7.	Unit no.	K-0603
8.	Unit measuring	1330.00 sq. ft.
9.	Date of execution of flat buyer agreement	25.05.2012
10.	Payment plan	Construction link
11.	Total consideration	₹ 45,02,530/- (As per payment plan at pg. 81 of complaint)

12.	Total amount paid by the complainant	₹ 45,00,985/- (As alleged by the complainants on pg-11 of complaint)
13.	Due date of delivery of possession as per clause 30 of the Developer buyer's agreement 36 months from the date of execution of agreement or within 36 months from date of obtaining all the required sanctions and approvals necessary for commencement of construction, whichever is later. With a grace period of 6 month  [Page 72 of complaint]	25.05.2015 (36 months from date of Execution of Builder Buyer Agreement i.e., 25.05.2012)  <b>(Note: Grace period not allowed)</b>
14.	Delay in handing over possession till the date of this order i.e., 24.09.2021	6 years 3 months 30 days
15.	Status of the project	Ongoing
16.	Occupation certificate	Not obtained
17.	Offer of possession for fit out	Not offered

### **B. Facts of the complaint**

3. The complainants pleaded the complaint on the following facts:
  - a. That the complainants are resident of above-mentioned address and the complainants are the purchasers/allottees of residential flat from respondent in the project named "ansal estella" sector-103, Gurgaon, Haryana. The present complaint is being filed by the complainants due

- to, the respondent failed to hand over possession within the stipulated time period as per the terms and conditions of the agreement.
- b. That the complainants are a law-abiding citizen and consumer who have 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 residential project and the complainants desired their own residential space.
  - c. That the complainants were subjected to unethical trade practice as well as subject of harassment, developer 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 developer buyer agreement between respondent and complainants mentioned in developer's representations, DTCP given the licence 17 of 2011 dated 08.03.2011.
  - d. That the development of the project came to the knowledge of the complainants through the shrewd marketing gimmick of the respondent and its marketing executives. The respondent assured and represented to the complainants of a high class aesthetic apartment and also assured timely delivery of the Unit booked in the said Project. The complainants in good faith fell into the trap of the respondent and believed various; representations made by the respondent which were subsequently proven to be false. The complainants purchased the Unit in the Project which was earlier allotted to one Mr R.K Sehgal (S/o Mr. N.K. Sehgal R/o C-1767, Sushant Lok-1, Gurugram) ("Original Allottee") vide Transfer letter

dated 23/12/2011. Thereafter complainants entered into a flat buyer agreement (hereinafter referred to as the "Agreement") with the respondent in the said Project for a total sale consideration of Rs. 45,02,530/- (Forty Five Lakhs Two Thousand Five Hundred and Thirty only). The complainants agreed to pay all the demands and charges as provided under the Agreement and all the payments as per payment schedule provided by the Respondent.

- e. That according to Clause 30 of the Agreement, the Respondent promised to complete the project within 36 months of the signing of the agreement plus an extended period of 6 months due to Force Majeure conditions. Hence, the due date to handover the possession fell due on 25.05.2015 and extendable up to 25/11/2015 as a grace period on account of force ajeure conditions. However, taking into consideration the then prevailing conditions i.e. from the date of booking of the unit and till date of handing over the possession as per the agreement, nothing constituted a Force Majeure condition during such period. Moreover, the respondent extended the 36 months of time period stipulated in the Agreement without giving any reasonable reasons with mala fide intent to deceive the complainants. The respondent has till date extended the time period for approximate 5.5 years after the expiry of the contractually due possession date without giving any reasonable reasons and has had malafide intent to deceive the complainants as the date of handing over the possession is still not known to the complainants even after various calls and meetings with the executives of the respondent. The clause 30, 31 and 41 of the Agreement reiterated as under

*"30. The Developer shall offer possession of the Unit any time 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 dues by 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"*

*"31. The Buyer shall not be entitled to any compensation on the grounds of delay in offering possession of the Unit due to any force majeure circumstances such as act of God, fire, earthquake, flood, civil commotion, war, riot, explosion, terrorist acts, sabotage or general shortage of energy labour equipment facilities steel cement other material or supplies, failure of transportation, strike, lock outs, action of labour union, any dispute with any contractor/ construction agency appointed by the developer, change of law, or any notice, order, rule or notification issued by any courts Tribunals and/or Authorities,, delay in grant of approvals for providing electricity and water supply, delay in grant of part full completion (occupancy) certificate by the Government/ or any other public or competent authority or intervention of Statutory Authorities, or any other reason(s) beyond the control of Developer. The Buyer shall also not be entitled to any compensation in the event of delay in making payment of dues by Buyer in terms of payment plan opted by the Buyer or as demanded by the Developer."*

*"41. In case the Buyer fails to take possession of his allotted unit within the period mentioned in the offer of possession letter, the developer or its nominated agency, as the case maybe, in addition to charges mentioned above, shall also charge holding charges, as applicable, from the date specified in the offer of possession and till the time physical possession is taken by the Buyer at site. In the event of any delay in payments of aforementioned charges, the Buyer shall also be liable to pay interest at 24% p.a. compounded quarterly, for a un paid amount as may be demanded by the developer or its nominated agency..."*

- f. That the general practice of this hon'ble authority has been to excuse the grace period and not include it in ascertaining the interest. The delay in delivery of possession is also considered to be after the end of the grace period. However, in this peculiar case, the grace period utilized by the respondent should not be taken

into account as the delay caused in delivering the possession is not due to force majeure conditions as mentioned in clause 31 of the agreement. Furthermore, as per the oral communications by the respondent regarding the delay in handing over the unit allotted to the complainants, it is amply clear that the respondent intended to evade all the assurances and previous obligations by taking a plea in the light of the pandemic COVID-19. However, in **Halliburton Offshore Services Inc. vs. Vedanta Limited and Ors.** (29.05.2020-DELHC): MANU/DE/1130/2020 it was held that the outbreak of a pandemic cannot be used as an excuse for non performance of a contract for which the deadlines were much before the outbreak itself.

Since, the liability of the respondent to handover the possession of the unit was due for almost 3 years before the advent of Covid-19, the respondent cannot be given the benefit of the same in the light of the above mentioned judgement. Furthermore, under any circumstance, the respondent cannot be given the benefit of two grace periods-firstly, the 6 months grace period as stipulated in the agreement and the other occasioned due to the pandemic.

- g. In the Clause 41 it is provided that in the event of delay in payments of holding charges, the Buyer shall also be liable to pay interest at 24% p.a. compounded quarterly, for any unpaid amount as may be deemed by the developer or its nominated agency and in Clause 35 of the agreement, the respondent is promising to pay only Rs. 5/- per sq ft per month on Super Area for delay in offering possession of the Unit. However this is against the objective of the Real Estate (Regulation and Development) Act, 2016, (hereinafter

referred to as the Act) and Section 18 of the Act and Such types of terms used in builder buyer agreement were held to be one-sided in para 181 of the judgment in *Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and ors.* (W.P 2737 of 2017), where in the Bombay HC bench held that:" Agreements entered into with individual purchasers were invariably one-sided, standard-format agreements prepared by the builders/ developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."

- h. That the respondent has substantially failed to discharge its obligation imposed on him under the Act. No delivery of possession has been made. The possession has been delayed from 25/11/2015 and for this delay in delivering of possession the respondent is liable to pay the interest for every month of delay as per Section 18 of the Act.
- i. That when the complainants inquired about the delay in possession and the penalty on such delay, the Respondent with unlawful intention paid no heed to the requests and queries of the complainants and never even bothered to intimate regarding the progress and construction status of the Project. That the complainants asked the respondent numerous times but the executives never bothered to provide a clear picture as to the status of the project or the final date of handing over the unit. That even after the delay of approximate 5.5 years, the complainants are



still unaware as to the date of handing over the possession of the unit. Moreover, as per the various telephonic conversations with the representatives, it was communicated that further escalation cost in terms of the Agreement may also be demanded. It is pertinent to mention that such escalation cost is directly attributable to the delay on part of the Respondent which for no reason and no fault shall accrue from the account of the complainants and demanded by the Respondent.

- j. That the complainants have always been diligent in making payments as per the agreement and has paid a total amount of Rs. 45,00,985/- (Forty Five Lakhs Nine Hundred and Eight Five Rupees Only) till date.
- k. That it is pertinent to mention that the respondent company did not register the Project with real estate regulatory authority till date. The Respondent Company has violated the provisions of Section 3 of the Real Estate (Regulation and Development) Act, 2016 with respect to the Registration of the ongoing Project for which occupancy/ completion Certificate is not received yet.
- l. That the respondent has also previously defaulted and failed to conduct the business in a bona fide manner and has also failed to fulfil its obligation and responsibility. This authority has in the case of similar facts of delayed possession in ***Pawan Gupta vs M/s Ansal Housing & Construction Ltd.*** (Complaint No. 1580 of 2019) against the same. The authority held the respondent liable for delay in delivery of the possession and directed to pay the interest at the prescribe rate.

- m. That in the case of *Nandani Modi V/s M/s Ansal Housing & Construction Ltd.* (Complaint No. 94 of 2018), the Hon'ble Authority, directed the same respondent developing the project in question to pay interest for every month of delay at prescribed rate i.e. 10.70% p.a. from the due date of possession till the offer of the possession to the complainants.
- n. That the present case is a clear exploitation of innocence and beliefs of the complainants and an act of the Respondent to retain the complainant's hard-earned money in illegal manner.
- o. That the Respondent has utterly failed to fulfil its obligations to deliver the possession of the Unit in time and adhere to the contentions of the agreement which has caused mental agony, harassment and huge loss to the complainants, hence the present complaint.

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

4. The complainants have sought following reliefs:
- a. To direct the respondent to provide the complainants with prescribed rate of interest on delay in handing over of possession of the unit on the amount paid by the complainants from the due date of possession as per the agreement till the actual date of possession of the Unit;
- b. If need be, to appoint a local commissioner to check the development of the project and submit a report anticipating the actual and complete delivery of possession as per the status of the project;

- c. To direct the Respondent to submit an affidavit stating the anticipated date for delivery of possession and hand over the possession of the apartment by such date, or to direct refund with interest on non-delivery of the apartment by the anticipated date.
  - d. To direct the Respondent to pay the litigation cost of Rs.1,25,000/.
  - e. Pass such order of further orders as this hon'ble authority may deem fit and proper in the facts and circumstances of the present case.
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. The complainants have filed the present complaint seeking refund and interest. It is respectfully submitted that complaints pertaining to refund, compensation and interest are to be decided by the adjudicating officer under Section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter 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.

- b) That the respondent is a Public Limited Company registered under the Companies Act, 1956, having its registered office at 606, Indraprakash, 21 Barakhamba Road, New Delhi-110001. The present reply is being filed by the respondent through its duly authorized representative named Mr. Vaibhav Chaudhary whose authority letter is attached herewith. The above said project is related to Licence No. 17 of 2011 dated 08.03.2011, received from the Director General, Town & Country Planning, Haryana, Chandigarh (DGTCP) over the land measuring an area of 15.734 acres falling in the revenue estates of Village Dhanwapur and Tikampura, District Gurugram and is the part of Sector-103 of Gurugram-Manesar Urban Development Plan-2021.
- c) The relief sought in the complaint by the complainants is based on false and frivolous grounds and he is not entitled to any discretionary relief from this hon'ble authority as the person not comes with clean hands may be thrown out without going into the merits of the case.
- d) That, even otherwise, the complainants have 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 buyer's agreement dated 25.05.2012, as shall be evident from the submissions made in the following paragraphs of the present reply.
- e) That the complainants approached the Respondent for the purchase of an independent unit in its upcoming residential

project "ESTELLA" (hereinafter "the project") situated in Sector-103, Village Dhanwapur and Tikampur, Gurugram. It is submitted that the complainants prior to approaching the Respondent, had conducted extensive and independent enquiries regarding the project and it was only after the complainants was fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondent to undertake development of the same, that the complainants took an independent and informed decision to purchase the unit, uninfluenced in any manner by the Respondent.

- f) That thereafter, the complainants consciously and wilfully opted for a construction Linked Plan for remittance of the sale consideration for the Unit in question and further represented to the respondent that the complainants shall remit every instalment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainant. The complainants further undertakes to be bound by the terms and condition of the application form and agreement as well.
- g) That, it is further submitted that despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. It is also submitted that the construction work of the project is swing on full mode and the work will be completed within prescribed time period had there been no force majeure.
- h) That without prejudice to the aforesaid and the rights of the respondent, it is submitted that the respondent would have

handed over the possession to the complainants within time had there been no force majeure circumstances beyond the control of the respondent, there had been several circumstances which were absolutely beyond and out of control of the respondent such as orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble Punjab & Haryana High Court duly. passed in Civil Writ Petition No.20032 of 2008 through which the shucking/extraction of water was banned which is the backbone of construction process, simultaneously orders at different dates passed by the Hon'ble National Green Tribunal restraining thereby the excavation work causing Air Quality Index being worse, maybe harmful to the public at large without admitting any liability. Apart from these the demonetization is also one of the main factors to delay in giving possession to the home buyers as demonetization caused abrupt. stoppage of work in many projects. The payments especially to workers to only by liquid cash. The sudden restriction on withdrawals led the respondent unable to cop with the labour pressure. However, the respondent is carrying its business in letter and spirit of the Flat Buyer's Agreement as well as in compliance of other local bodies of Haryana Government as well as Government of Haryana or the Centre Government, as the case may be.

- i) That, it is submitted that the complaint is not maintainable or tenable under the eyes of law, as the complainants have not approached the hon'ble adjudicating officer with clean hands and have not disclosed the true and material facts relates to this case of complaint. The complainants, thus, have approached the

hon'ble adjudicating officer with unclean hands and have suppressed and concealed the material facts and proceedings which has direct bearing on the very maintainability of purported complaint and if there had been disclosure of these material facts and proceedings 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 adjudicating officer 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.

- j) That without admitting or acknowledging the truth or legality of the allegations advanced by the complainants and without prejudice to the contentions of the respondent, 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 interest cannot be called in to aid in derogation and ignorance of the provisions of the Flat Buyer's Agreement. It is further submitted that the interest for the alleged delay demanded by

the complainants is beyond the scope of the buyer's agreement. The complainants cannot demand any interest or compensation beyond the terms and conditions incorporated in the 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 promoters/developers 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. Para No.86 and 119 of the above said citation are very much relevant in this regard.

It is further submitted that the interest for the alleged delay demanded by the complainants is beyond the scope of the buyer's agreement. The complainants cannot demand any interest or compensation beyond the terms and conditions incorporated in the Buyer's Agreement.

- k) That without prejudice to the contentions of the respondent, it is submitted that the present complaint is barred by limitation. The complainants have alleged that due date of possession in respect of the said unit was 23.06.2015, and therefore, no cause of action is arisen in favour of the complainants on 23.06.2015, and thus, the present complaint is barred by law of limitation and the Hon'ble Adjudicating Officer lacks of jurisdiction.
- l) That, it is also a conceded and admitted fact that the project related to the present complaint has not yet been registered with



RERA and as such the Hon'ble authority lacks jurisdiction to entertain the present complaint.

- m) That the respondent 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.
- n) 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 conceptualisation and development of the project in question. Furthermore, when the proposed allottees defaulted in their payment as per schedule agreed upon, the failure has a cascading effecting on the operation and the cost for proper execution of the project increase exponentially whereas enormous business losses befall upon the respondent. The respondent, despite default of several allottees has diligently and earnest pursued the development of the project in question and has constructed the project in question as expeditiously as possible. It is further submitted that the respondent had applied for registration with the Authority of the said project by giving afresh date for offering of possession. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainants are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed.
- o) That, it would be relevant to mention here in case titled ***as Mr. Abhishek Mohan Gupta Vs. Mis Ireo Grace Realtech (Pvt.) Ltd., Complaint No.2044 of 2018***, date of first hearing 12.03.2019,

decided on 12.03.2019 by the Hon'ble Adjudicating Officer, in Para No.36, it was held by the Hon'ble Adjudicating Officer the authority came across that as per clause 13.3 the respondent has agreed to offer the possession of the said apartment within a period of 42 months from the date of approval of building plans and/or fulfilment of preconditions imposed thereunder + 180 days grace period. The building plan for the project in question was approved on 23.07.2013 which contained a precondition under clause 17(iv) that respondent should obtained clearance from Ministry of Environment and Forest, Government of India before starting construction of project. The said environment clearance for the project in question was granted on 12.12.2013 containing a pre-condition of obtaining fire safety plan duly approved by fire department before starting construction. The respondent obtained the said approval on 27.11.2014. Therefore, the due date of possession comes out to be 27.11.2018 and the possession has been delayed by 3 months and 13 days till the date of decision...."

#### **E. Jurisdiction of the authority**

7. 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**

8. 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**

9. 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**

10. 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 allottees of the project, 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, demonetisation, lockdown due to covid-19 in March 2020.

11. The due date of possession was in the year 2017 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 allowing to be taken into consideration. While considering whether the said situations or circumstances were in fact beyond the control of the respondent and hence the respondent is not entitled to force majeure clause 31, the authority did not take into consideration all the pleas taken by the respondent to plead the force majeure condition happened before 01.10.2017. However as far as the delay in payment of instalments by many allottees is concerned the respondent has not given any specific details with regard to the same. As far as NGT order, demonetization of Rs. 500/- and Rs. 1000/- currency notes and ban on extraction of water by Hon'ble Punjab & Haryana High Court are concerned these events are stated to have taken place in the year 2015, 2016 & 2012 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 relief sought by the complainant**

**G.I. Direct the respondent to pay delay interest on paid amount till the actual date of possession of unit.**

12. In the present complaint, the complainants intend to continue with the project and is seeking delayed possession charges at prescribed rate of interest on the amount paid. Clause 30 of the flat buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below: -

“30

*The developer shall offer possession of the unit any time, within a period of 36 months from the date of execution of the 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 dues by 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.”*

13. 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 promoters. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favor of the promoters and against the allottees that even a single default by the allottees in fulfilling formalities and documentations etc. as prescribed by the promoters may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the flat buyer agreement by the promoters are just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their right 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 allottees is left with no option but to sign on the dotted lines.

**Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of 36 months plus 6

months from date of agreement or the date of commencement of construction which whichever is later means the date on which the promoter raised the demand for start of construction of the project. Since in the present matter the BBA incorporates qualified reason for grace period/extended period of 6 months in the possession clause for obtaining occupation certificate subject to force majeure. The force majeure reasons provided by the promoter are taken into consideration by the authority for the reasons quoted above. Accordingly, this grace period of 6 months shall not be allowed to the promoter at this stage.

14. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottees 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."*

15. 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.

16. 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%.
17. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees 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;"*

18. Therefore, interest on the delay payments from the all 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.
19. On consideration of the documents available on record and submissions made 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 25.05.2012 the possession of the subject apartment was to be delivered within 36 months from the date of commencement of construction. The period of 36 months expired on 25.05.2015. 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 25.05.2015. 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 allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 25.05.2015 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**

20. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions 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., 25.05.2015 till the date of order i.e., 24.09.2021. The monthly payment of interest till the offer of possession shall be paid on or before 10<sup>th</sup> of each subsequent month.



- ii. The arrears of such interest accrued from 25.05.2015 till the handing over of the possession, shall be paid by the promoters to the allottee within a period of 90 days from date of this order.
  - 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 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 promoters 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 respondents shall not charge anything from the complainant which is not the part of the agreement.
  - vi. The cost imposed on either parties be included in the decree sheet.
22. Complaint stands disposed of.
23. File be consigned to registry.

<b>(Samir Kumar)</b> Member	<b>(Vijay Kumar Goyal)</b> Member
Haryana Real Estate Regulatory Authority, Gurugram	
Dated: 24.09.2021	

Judgement uploaded on 20.12.2021