

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

**Complaint no. : 2430 of 2021**  
**First date of hearing: 19.08.2021**  
**Date of decision : 24.09.2021**

1. Rajiv Yadav  
2. Kanta Yadav  
**Both R/O: - 221, Deed Plaza Complex, Opposite Civil  
Court, Gurugram**

**Complainants**

**Versus**

Ansal Housing Limited  
**Regd. office: 15 UGF Indra Prakash,  
21, Barakhamba Road, New Delhi -110001**

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Vijay Kumar Goyal

**Member**  
**Member**

**APPEARANCE:**

Sh. Sanjeev Sharma  
Smt. Meena Hooda

Advocate for the complainants  
Advocate for the respondent

**ORDER**

1. The present complaint dated 22.06.2021 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 Height 86", Sector 86, Gurugram                                     |
| 2.    | Project area                                | 12.843 acres   |
| 3.    | Nature of the project                       | Residential Project  |
| 4.    | DTCP license no. and validity status        | 48 of 2011 dated 29.05.2011<br>valid till 28.05.2017                       |
| 5.    | Name of licensee                            | M/s Resolve Estate Pvt. Ltd.   |
| 6.    | HRERA registered/ not registered            | Not Registered   |
| 7.    | Unit no.                                    | H - 1004<br>[As per page no. 28 of complaint]                              |
| 8.    | Unit measuring                              | 1360 sq. ft.<br>[As per page no. 28 of complaint]                          |
| 9.    | Date of execution of flat buyer's agreement | 18.09.2012<br>[As per page no. 25 of complaint]                            |
| 10.   | Payment plan                                | Construction linked payment plan<br>[As per page no. 41 of complaint]      |
| 11.   | Total consideration                         | Rs.52,29,044<br>[As per page no. 41 of complaint]                          |
| 12.   | Total amount paid                           | Rs. 52,27,034/-<br>[As alleged by complainant on page no. 07 of complaint] |
| 13.   | Commencement of construction                | 01.10.2013<br>[As per page no. 44 of complaint]                            |

|     |  |   |
|-----|--|---|
| 14. | Due date of delivery of possession as per clause 31 of the said agreement i.e. 42 months from the date execution of agreement (18.09.2012) or from the date of obtaining all the required sanctions and approvals necessary for commencement of construction, whichever is later + plus 6 months grace period in offering the possession of the unit.<br>[As per page no. 33 of complaint] | 18.03.2016<br><br>[ Calculated from the date when agreement executed i.e.; 18.09.2012]<br><br>[Note: Grace period is not allowed] |
| 15. | Occupation certificate   | Not obtained  |
| 16. | Offer of possession  | Not offered   |
| 17. | Delay in handing over possession till date of order i.e.; 24.09.2021   | 3 years 7 months 30 days  |

### B. Facts of the complaint

3. That during the month of July 2012, the complainants (who are husband and wife) were searching a flat in the same vicinity, where the respondent, as promoter, was developing the project as mentioned above. Keeping in view of the fact that the respondent-promoter is having a good name in the field of real estate and earlier also the respondent have launched various residential projects for allotment of flats to the general public under various schemes, the complainants came to know further details about the said project and after inquiring from the officials of the respondent-promoters, the complainants believed the assurances of the respondents that the said project shall be completed in a time bound manner with excellent construction and infrastructure. believing on the assurances of the officials of the respondent the complainants showed their interest in a two bedroom

flat. The complainants at that time came to know about shri Virender Yadav and Pawan Yadav, who originally/initially booked a two bedrooms flat i.e. unit no. 1004 in tower no. 'H', 10<sup>th</sup> floor having residential Super area 1360 sq. ft. A flat buyer agreement of the said flat was also executed on 18<sup>th</sup> Sept. 2012 with the original allottee shri Virender Yadav and Pawan Yadav with detailed terms and conditions agreed in respect of the said flat. The original allottees were not interested in continuing the said project and therefore the said flat was purchased by the complainants on the same terms and conditions as agreed on 18<sup>th</sup> Sept. 2012 at same rates. The respondent-promoter after completion of documentary formalities by the original allottee Shri Virender Yadav and Pawan Yadav and the complainants, transferred the said flat in the names of the complainants vide their letter dated 18/10/2012. It is also worthy to mention here that the amount deposited by the original allottee was paid by the complainants at the time of the transfer of the said flat to the original allottees.

4. That as per the agreement, the complainants were allotted flat/residential unit no. 1004 more particularly in Tower No. 'H', 10<sup>th</sup> Floor having, Super area 1360 sq. ft. at a total basic price of Rs. 3415.59/- per sq. ft. amounting to Rs. 46,45,200/- including one car parking plus other charges as mentioned in flat buyer agreement dated 18/09/2012. The specific clause no. 31 of the said agreement provides that possession of said flat shall be offered within maximum 48 months from the date of execution of the flat buyer agreement. The clause 31 provides as under:

*“The developer shall offer possession of the unit any time, within 42 months from the date of execution of agreement or within 42 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 buyer and subject to force-majeure circumstances as described in clause 32. Further, there shall be a grace of 6 months allowed to the developer over and above the period of 42 months as above in offering the possession of the unit”.*

5. Therefore, the possession should have been handed over till 18<sup>th</sup> Sept. 2016. Unfortunately, despite timely payment, the project is incomplete without any basic amenities and whenever inquired from the officials of the respondent-promoter at the site and at their head office at barakhamba road, Connaught place, New Delhi no satisfactory reply was given by the respondent-promoter. That after purchasing of the said flat and since 18/10/2012, the complainants always paid the amount, whenever demanded by the respondent. Up till 31/05/2016 the complainants have paid an amount of Rs. 51,94,627/- to the respondent as acknowledged vide letter dated 24.03.2017 issued by the respondent. Thereafter, the complainants further paid an amount of Rs.32417/- on 07/04/2017 some difference in VAT amount. Therefore, in total the complainants have paid a sum of Rs. 52,27,034/- (rupees fifty two lakhs, twenty seven thousand and thirty four only) to the respondent till date.
6. That even after the specific terms and conditions settled in the buyer's agreement, the respondent failed to hand over the possession within the stipulated period of four years and since 18/09/2016, the respondent is delaying things on one pretext or the other. The complainants have also

visited the office and the construction site of the respondent/ promoters but the project is incomplete without any basic amenities.

7. That as per the clause 31 of the agreement, the possession of said apartment was to be handed over to complainants within 42 months from the date of signing of the flat buyer agreement but the same is not yet ready for habitation of a human being.
8. That complainants on various occasions have visited at respondent's office for delivery of possession and completion of apartment and project, but unfortunately each and every time, the respondent replied with lame excuses and till date, neither the project is complete nor the respondent/ promoter could give the basic amenities in the project and neither the project is in the habitable conditions. complainants are also apprehending that respondent is also not having all clearance and permissions from the concerned authorities and rather respondent/promoter have cheated the complainants as well as other buyers of the project.
9. That respondent has failed to provide the flats till date in habitable conditions and the respondent enjoyed the valuable amount given by the complainants for their personal benefits. The respondent/ promoter have dishonestly converted above said amount to some other projects rather completing the project in question in a time bound manner and as per the terms and condition in the flat-buyer agreement.
10. That complainants have suffered huge pecuniary loss, harassment, mental agony as well as physical pain, difficulties merely owing to the false and

inducive promises, representation and deficiency and negligent services on the part of the respondent/promoter.

11. That respondent/promoter has breached the terms and conditions of the contract, which comes under the ambit of deficiency of service.
12. That respondent/promoter has collected the consideration amount of the said flat and since then the respondent is using the complainants 'hard earned money for their personal interest and delayed the construction of the above said project and failed to deliver the timely possession of the above said flat. The respondent failed to provide the basic infrastructure/amenities within stipulated time, all these amounts to deficiency in services on the part of the respondent/promoter.
13. That the complainants severally tried to meet the officials of the respondent to inquire about the status of the project and in case the same could not be completed, to demand their amount with interest but no responsible official in respect of the project in question, was ever found in their office.
14. That the cause of action to file the complaint is continuing in nature as the respondent/promoter has failed to comply with the terms and condition of the flat-buyer agreement dated 18.09.2012 and failed to deliver the possession of the flat in question as per the settled terms and neither could refund the amount taken from the complainants along with interest. Therefore, the cause of action is still continuing in nature.
15. That the complainants have diligently discharged all their obligations as per the apartment buyer's agreement, whereas, the respondent/promoter has failed to perform their obligations stipulated in the agreement. The

complainants are willing to pay the outstanding amount, if any, after the deduction of interest liable to be paid to the complainant(s)-petitioner(s) on account of delayed possession.

16. That the respondent- promoter has failed to develop the project as promised at the time of initial allotment. The complainants-petitioners have invested their hard earned earning in the project based on assurances given by the respondent – promoter; however, they have been harassed and aghast. The respondent-promoter has failed to address the concerns of the petitioners-complainants even after several requests; thus, the petitioners-complainants have lost faith.
17. 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.

**C. Relief sought by complainants**

The complainants prays for the following relief(s)

[Specify below the relief(s) claimed explaining the grounds of relief(s) and the legal provisions (if any) relied upon]

- i) Direct the respondent to handover the possession of the unit in question in habitable condition with time bound manner along with delayed interest.
- ii) To pay interest for the delay in handing over possession from the due date i.e. 18.03.2016 as per the RERA Act.



**D. Reply by the respondent**

18. The respondent has 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 have filed the present complaint seeking refund, 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 authority. The present complaint is liable to be dismissed on this ground alone.
  - ii. 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 the Act as well as an incorrect understanding of the terms and conditions of the allotment letter/ buyer's agreement dated 18.09.2012, which is evidentiary from the submissions made in the following paragraphs of the present reply.
  - iii. 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.48 of 2011 dated 29.05.2011 received from DTCP, Chandigarh.

- iv. That the complainants have approached the respondent in the year 2011 for the purchase of 2 BHK Flat bearing unit no. H - 1004, tower-C in residential project "Ansals Heights 86", Sector-86, Gurugram, Haryana. It is submitted that complainants prior to approaching the respondent had conducted extensive and independent inquiries regarding the project and it was only after the complainants was being fully satisfied with regard to all aspects of the project, including but limited to the capacity of the respondent to undertake development of the same and the complainants took an independent and informed decision to purchase the unit, uninfluenced in any manner.
- v. That it is pertinent to mention here 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 as given by the respondent to the authority.
- vi. 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 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 factors 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 respondent unable to cope with the labour pressure. However, the respondent 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 respondent is 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 respondent was not able to handover the possession on time as the same was beyond the control of the respondent.
- 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 authority in terms of Act of 2016 which provides that

***"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 rigours 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 have not approached this authority with clean hands and has not disclosed the true and material facts relates to this case of complaint. The complainants, thus, have approached the 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 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 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 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.

- xi. That the Central Government levied such taxes, which are still beyond the control of the respondent, it is specifically mentioned in clause 7 & 8 of the 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.
19. 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**

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**

20. 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.*

21. 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 delayed payments, demonetization, COVID 19 and various ban by NGT.**

22. 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 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 but respondent can build the project within time and hence the respondent is not entitled to force majeure clause 32, 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 32 for delay with force majeure condition.

#### **G. Findings on the reliefs sought by the complainants**

##### **Reliefs sought by the complainants:**

- i. Direct the respondent to handover the possession of the said flat to the complainants, complete in all respects, in a time bound manner.
  - ii. Direct the respondent to pay interest for delay from 18.09.2016 to 18.05.2021 at the rate of 9.30% annually as per RERA Act in handing over of possession from the due date i.e. 13.08.2016 as per RERA Act. The total amount is calculated as Rs. 23,09,042/-
23. In the present complaint, the complainants intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

***"Section 18: - Return of amount and compensation***



18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

24. Clause 31 of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

**"31. POSSESSION**

**Time of handing over the possession**

*The developer shall offer possession of the unit anytime, within a period of 42 months from the date of execution of agreement or within 42 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 32. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 42 months as above in offering the possession of the unit."*

25. As per clause 31 of buyer's agreement the respondent-promoter has proposed to handover the possession of the subject apartment within a period of 42 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 18.09.2012 Therefore, in present case due date of possession is calculated from the date when the agreement is executed i.e.; 18.09.2012, which comes out be 18.03.2016.

**26. Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment by 18.03.2016 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.

**27. 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.*

28. 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.
29. 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%.
30. 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:
- "(z) "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;"*
31. 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.

32. 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 31 of the agreement executed between the parties on 18.09.2012, the possession of the subject apartment was to be delivered within stipulated time i.e., by 18.03.2016. 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 18.03.2016. 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., 18.03.2016 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**

33. 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., 18.03.2016 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 18.03.2016 till the date of order by the authority shall be paid by the promoter to the allottees 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 10<sup>th</sup> 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(za) of the Act.
- v. The respondent shall not charge anything from the complainants which is not the part of the agreement.

- vi The cost imposed during the proceeding on either of the parties to be included in the decree sheet.
33. Complaint stands disposed of.
34. 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