

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

**Complaint no. : 417 of 2020**  
**First date of hearing: 26.03.2020**  
**Date of decision : 24.09.2021**

Ramawtar Meena

**R/O** -Ramanju Niwas, Vill - Khedan, P.O. - Khedi  
Rajasthan - 303313

**Currently residing at** - Duplex - 193, Indian Oil  
Corporation Limited, Refinery Township,  
Dhaligaon, Dist. Chirang, Assam

**Complainant**

**Versus**

Ansal Housing Limited

**Address:-** 606, 6<sup>th</sup> Floor, Indra Prakash  
Building, 21 Barakhambha Road  
New Delhi - 110001

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri V.K. Goyal

**Member**  
**Member**

**APPEARANCE:**

Shri Manish Yadav  
Ms. Meena Hooda

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. The present complaint dated 04.02.2020 has been filed by the complainant/allottee 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 complainant 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	Ansals Townwalk, Sector – 104, Gurgaon
2.	Project area	2.1 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	103 of 2012 dated 01.10.2012 valid upto 30.09.2016
5.	Name of licensee	Jagriti Realtors Pvt. Ltd. And 3 others
6.	RERA Registered/ not registered	Not registered
7.	Unit no.	OFF – 605
8.	Unit measuring	492.66 sq. ft.
9.	Date of execution of Apartment Buyers Agreement	29.01.2014 (Page 31 of the complaint)
10.	Due date of delivery of Possession as per clause 30 i.e. 42 months from the date of execution of shop/office buyer agreement or within 42 months	29.07.2017 <b>(Grace period is not allowed)</b>

	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 31	
11.	Total sale consideration	Rs. 2,66,7754/- (As per payment plan page no. 34 of the complaint)
12.	Amount received from the complainant	Rs. 26,23,358/- (As stated by complainant on pg. 5 of complaint)
13.	Delay in handing over possession till the date of decision i.e 24.09.2021	4years, 1 months and 26 days
14.	Occupation Certificate	Not received
15.	Offer of possession	Not offered

**B. Facts of the complaint**

(i) The complainant is peace loving and law abiding citizen of this country and has never violated any law intentionally. The grievance of the complainant relates to the breach of contract, gross unfair trade practice and deficiency in the services committed by the respondents in regard to office/shop buyer's agreement no. OFFIC-605 in "AnsalsTowntalk" situated in Sector 104, Gurgaon and in village Dhanwapur, Tehsil and District Gurgaon (Haryana), herein referred to "the

office/shop". respondent (hereinafter referred to as seller/builder/promoter) is a company duly incorporated under the Companies Act 1956 and is being sued through its Chairman cum Managing Director.

The respondent is carrying out business as builders, promoters and colonizers and is inter alia engaged in development and construction activities under licences from the State of Haryana statutory Authorities. It obtained licence for development bearing no. 103 of 2012 dated 01.10.2012, which was obtained by the group of four companies namely Jagriti Realtors Pvt. Ltd., Welfare Developers Pvt. Ltd., Pratham Realtors Pvt. Ltd., Western Realtors Pvt. Ltd. on 01.10.2012 through various sale deeds and entered into a collaboration agreement dated 01.11.2011 with the developer appointing the developer to develop, construct and market the build-up areas in the proposed commercial project namely "Ansals Townwalk" sector 103, Gurugram.

(ii) The present complaint highlights gross illegality; breach of contract and unfair trade practice committed /adopted by the seller / builder /promoter to cheat and defraud the complainant. Respondents has indulged in illegal commissions

and legal omissions for vested commercial considerations amounting to gross unfair trade practice and deficiency in the service and delay in handover the physical possession of the premises and due to this causing huge loss to the complainant both monetary and mental harassment as hereinafter stated. That the facts and circumstances culminating in the filing of the present complaint are set forth herein, That in August 2013 the officials of the respondent company directly himself contacted the complainant and show him the broacher of the project and describe all illusive details of the projects and told the complainant that the project will be completed within 42 months completely and they will be handed over possession in 2017. The complainant was impressed by the statements in brochure, oral representation regarding quality of project and timely completion and handover of the possession of the project.

(iii) That on 16.08.2013 the complainant shows his interest in Shop/officer bearing no. 605 in the project namely "AnsalTownwalk", Sector 104, Gurgaon, which was offered by the respondent on resale basis and thereafter complainant filed an application for change in right to purchase the said property

to the respondent and respondent has confirmed complainant's application and credited Rs. 10,88,042/- on the name of complainant, which has already paid by the earlier purchaser on 21.01.2013. On 29<sup>th</sup> January 2014 complainant enter into a shop/office buyer's agreement with the respondent and has opted construction link payment plan in which all future payment was linked with the construction of the project and with the assurance that the project has completed on time, complainant has paid all payments as the respondent company raised.

- (iv) That during the signing of the said agreement once again the complainant was taken into confidence that the said project was completed on time or within 42 months from the execution of this shop/office buyer's agreement by the first allottee i.e. on **21.01.2013** or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later and the same is also written in **clause no. 30** of the said agreement. Delivery time was the core factor for the complainant to have booked the said apartment in question time being an essence of the agreement and was promised to be delivered by

**January 2017.** It is submitted that if the delivery was not time bound, the complainant would not have brought the said office/shop. That in month of July 2018, when the complainant quarry about the date of handed over the physical possession of his unit than the respondent did not confirm the same till now.

(v) It was further stipulated in **clause 36** of said agreement that in case the seller/ builder is unable to deliver the shop/office to the purchaser then the developer would pay to the buyer @5/- per sq. ft per month on super area. This is an extremely discriminatory clause because the seller / builder charges interest 24% per annum compounded quarterly from the purchasers and pay them only 5% per sq. ft. per month on super area as per **clause no. 23** which is much lower then what they get from the purchaser. This clause is extremely arbitrary unfair and discriminatory when compared to the penalty clauses stipulated in the agreement qua timely payments in favour of the seller/ buyer. The most shockingly the possession has not been delivered till date despite repeated and frantic requests being made in this regard to deliver possession as per agreement dated 29<sup>th</sup> January 2014

and promise. The complainant reiterates that despite innumerable communication with the seller/ builder they got absolutely no response in the matter of delivering the possession which is deliberate and willful. The possession has been delayed near about ***four year***.

- (vi) The complainant has lost confidence and in fact got no trust left in the seller/ builder as it has deliberately and willfully indulged in undue enrichment by cheating at the cost of purchaser/ complainant besides being guilty of indulging in unfair trade practice and deficiency in services in failing to deliver the possession of the apartment as per agreement dated 29.01.2014. That in the aforesaid circumstances the complainant again visited the office of the respondent and again to talk the seller /builder and to find out the actual position for possession. The complainant went to building site and saw that the complainant still wait for some more years to get the physical possession of the shop/office in the said project. The complainant was surprised to see only skeleton structure of tower, wherein the complainant has purchased the office/shop in question. The seller / builder have told the complainant that there is no chance of the



completion for at least another one years. The complainant visit has confirmed that all the promises of completion were false and the seller/ builder has clearly duped cheated and defrauded the complainant and taken them for ride. The seller/ builder have not registered with the Haryana Real Estate Regulatory Authority.

**Relief sought by the complainant: -**

3. The relief claimed by the complainant -:

(i) Delay penalty as prescribed under RERA w.e.f from January 2017 upto the date of actual delivery of possession of the apartment after receipt of occupation certificate.

(ii) To deliver the possession of the shop/office space complete in all respects.

4. 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 complainant had approached the answering respondent for booking an flat no. OFF -605 in an upcoming project Ansals townwalk, Sector 104, Gurugram. Upon the satisfaction of the complainant regarding inspection of the site, title, location plans, etc. an agreement to sell dated 29.01.2014 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 complainant 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 complainant 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 complainant belatedly. The complainant has admittedly filed the complaint in the year 2021 and the cause of action accrue on 29.07.2017 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 complainant 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. 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 complainant.
- 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 complainant admittedly have entered into a builder buyer agreement which provides for the event of delayed possession. That the answering respondent has clearly provided in clause 35 the consequences that follow from delayed possession. It is submitted that the complainant cannot alter the terms of the contract by preferring a complaint before the Hon'ble HRERA Gurugram. 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.

5. 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 complainant

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

6. 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 complainant 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.I 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. 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 reasons given by the respondent are supported by the documentary proof of the same. While considering whether the said situations or circumstances were in fact beyond the control of the respondent, but it is pertinent to mention here that he can complete the project within time. Hence the respondent is not entitled to force majeure clause 31. 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., prior to due delivery of possession of the apartment to the complainant. 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 complainant**

**Reliefs sought by the complainant:**

(i) In the present complaint, the complainant 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."*

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 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 31. 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."*

- iii. 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 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 29.01.2014. 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.; 29.01.2014, which comes out to be 29.07.2017.

- iv. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment by 29.07.2017 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.
- v. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is 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.*

- vi. 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.
- vii. 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%.
- viii. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the

allottee, in case of default. The relevant section is reproduced below:

*“(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;”*

- ix. Therefore, interest on the delay payments from the complainant 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 complainant in case of delayed possession charges.
- x. 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 29.01.2014, the possession of the subject apartment was to be delivered within stipulated time i.e., by 29.07.2017. 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 29.07.2017. 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., 29.07.2017 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**

7. 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., 29.07.2017 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 29.07.2017 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 10<sup>th</sup> of the subsequent month as per rule 16(2) of the rules.

- (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 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 complainant 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.

8. Complaint stands disposed of.

9. File be consigned to registry.

**(Samir Kumar)**  
Member

**(Vijay Kumar Goyal)**  
Member

Dated:- 24.09.2021

Judgement uploaded on 20.12.2021