

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

Complaint no.:	3042 of 2021
First date of hearing:	24.09.2021
Date of decision:	24.09.2021

1. Mrs Sangitta Ghuliani  
2. Mr Girish Kumar Ghuliani  
**Both RR/o:** Elite 1001, Mapsko Royale Ville,  
Sector 82, Gurugram 122012, Haryana.

**Complainants**

Versus

Ansal Housing & Construction Ltd.  
**Office address:** 15, UGF, Indraprakash, 21,  
Barakhamba Road, New Delhi- 110001.

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal  
Shri Samir Kumar

**Member  
Member**

**APPEARANCE:**

Smt. Priyanka Agarwal (Advocate)  
Smt. Meena Hooda (Advocate)

Complainants  
Respondent

**ORDER**

1. The present complaint dated 09.08.2021 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 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:

Sno.	Heads	Information
1.	Project name and location	"Ansal HUB 83 Boulevard", Sector-83, Gurugram
2.	Project area	2.60 acres
3.	Nature of the project	Commercial complex
4.	DTCP license no. and validity status	i. 113 of 2008 dated 01.06.2008 Valid up to 31.05.2018 ii. 71 of 2010 dated 15.09.2010 Valid up to 14.09.2018
5.	HRERA registration details	<b>Registered</b> vide no. 09 of 2018 dated 08.01.2018 for 2.80 acres. Valid up to 31.12.2020
6.	Unit no.	G-123 [Page no. 27 of complaint]
7.	Unit measuring	238.00 sq. ft.
8.	Date of execution of flat-buyer agreement	02.05.2015 [Page 23 of complaint]
9.	Payment plan	Construction linked payment plan [Page 43 of complaint]
10.	Total consideration	₹ 51,34,609.48/- (As per payment plan at page 21 of complaint)
11.	Total amount paid by the complainants	₹ 48,94,210.27/- (As alleged by the complainants at page 11 of complaint)

12.	Due date of delivery of possession as per clause 30 of the builder buyer's agreement 42 months from the date of execution of agreement (i.e., 02.05.2015) or within 42 months from date of obtaining all the required sanctions and approvals (i.e., building plans approved on 25.07.2014) necessary for commencement of construction, whichever is later. Further, there shall be grace period of 6 months for offering possession of the unit. [Page 34 of complaint]	02.11.2018  (Builder buyer's agreement being executed later, due date of possession is calculated from date of execution of builder buyer's agreement i.e., 02.05.2015)  <b>(Note: Grace period is not included)</b>
13.	Offer of possession	Not yet offered
14.	Delay in handing over possession w.e.f. 02.11.2018 till the date of this order i.e., 24.09.2021	2 years 10 months 22 days

**B. Facts of the complaint**

3. The complainants have pleaded the complaint on the following facts:
- That 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. Based on promises and commitment made by the respondent, complainants booked shop admeasuring 364 sq. ft., in the commercial project shop/unit no. G-134, "Ansals HUB 83 Boulevard", Sector 83, Gurugram, Haryana. The initial booking amount of Rs.7,00,000/- was paid through cheques dated 30.11.2013 and 05.12.2013. (More than 7years back).
  - That the respondent to dupe the complainants in their nefarious net, even executed builder buyer's agreement with the

complainants on 02.05.2015. On the basis of the said agreement, the respondent created a false belief that the project shall be completed in time bound manner and in the garb of this agreement persistently raised demands with threat of levying interest at a compounded rate of 24% for any delay in payments. Due to persistent demands and threats of levying interest for delay payments, they were able to extract huge amount of money from the complainants.

- c. That as per clause 23 of the builder buyer's agreement, the buyer was charged very high interest rate i.e., 24% per annum, compounded quarterly. Furthermore, according to clause 24 of agreement, if buyer fails to pay due instalments within stipulated period, the respondent could cancel the agreement and forfeit the earnest money, without giving any notice to buyer. However, as per clause 34 of the builder buyer's agreement, the developer/respondent had very cleverly and specifically accepted a meagre liability to pay Rs.5/- per sq. ft. per month on the super area for the delay in offering possession.
- d. That the total cost of the said shop is Rs.51,34,609.48/- and a sum of Rs.48,94,210.27/- was paid by the complainants in time bound manner. This amount constituted more than 95% of the total sum taken from the complainants within 4 years. This amount was taken by the respondent through fraudulent means by erecting a bare structure within 2018. The respondent declined to complete the project after collecting money and there has been little progress in construction from 2015 onwards. As per section 19(6) of the Act, the complainants have fulfilled their responsibilities in

- regard to making the necessary payments in the manner and within the time specified in the said agreement.
- e. That the complainants have paid all the instalments timely and deposited Rs. 48,94,210.27. The respondent in an endeavor to extract money from allottees devised a payment plan under which respondent linked more than 35 % amount of total paid against as advance. Rest 60% amount linked with the construction of super structure only, which is not depended or co-related to the finishing of flat and internal development of facilities/amenities and after taking the same, the respondent has not bothered to any development on the project till date as a whole project is not more than 50 % and in term of particular tower just built a super structure only. The respondent has extracted huge amount and has not spend the money on project which is illegal and arbitrary and matter of investigation.
- f. That the builder started construction work almost 7 years back and quickly erected a bare structure with sole intention of taking money from buyer on construction linked instalments. Respondent is not completing the project and intends to delay for undefined times to complete the project. The 7 years long period has made adverse effect on construction quality of project.
- g. That keeping in view the snail paced work at the construction site and half-hearted promises of the respondent, the chances of getting physical possession of the assured shop in near future seems bleak and that the same is evident of the irresponsible and desultory attitude and conduct of the respondent, consequently injuring the interest of the buyers including the complainants who have spent

their entire hard earned savings and taken interest bearing loan in order to buy this unit stands at a crossroads to nowhere. The inconsistent and lethargic manner, in which the respondent conducted its business and their lack of commitment in completing the project on time, has caused the complainants great financial and emotional distress and loss.

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

4. The complainants have sought following reliefs:

- a. Direct the respondent to pay delay interest on paid amount of Rs 48,94,210.27/- at the rate of 24% till the handing over the physical possession.
- b. Direct the respondent to complete the project immediately and hand over the possession of the shop with all basic amenities which mention in brochure.
- c. Direct the respondent to quash the one-sided clauses from builder buyer's agreement.
- d. Pass an order for payment of GST amount levied upon the complainants and taken the benefit of input credit by builder.
- e. Pass such order or 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 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 Act read with rule 29 of 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 license no. 113 of 2008 dated 01.06.2008 and license no. 71 of 2010 dated 15.09.2011, received from the Director General, Town & Country Planning, Haryana, Chandigarh (DGTCP) over the land measuring an area of 2.60 acres.
- c. That 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 02.05.2015. Since the Act and the rules, came into force, the respondent has decided and has already been applied for the registration of the said project.
- d. That the complainants approached the respondent sometime in the year 2013, for the purchase of an independent unit in the said project. 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 were 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, un-influenced in any manner by the respondent.
- e. That the complainants, in pursuance of the application form, were allotted an independent unit bearing no. G-123, type of unit - Shop, super area of 238 sq. ft. (22.11 sq. mtrs.) in the said project. The complainants consciously and willfully 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 complainants. The complainants further undertake to be bound by the terms and conditions of the builder buyer's agreement as well.
- f. 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.
- g. 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 were 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 is only by liquid cash. 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'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. Apart from this, the Union of India and respective states including Haryana State in order to break out the surge of global pandemic, COVID 19, has imposed the lockdown throughout India. The lockdown was beyond the control and command of the respondent.

- h. That the complaint is not maintainable or tenable under the eyes of law as the complainants have not approached the hon'ble authority 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 authority 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.

- i. 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 builder 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 under section 4 of the Act to intimate fresh date of offer of possession while complying the provision of section 3 of the Act as it was opined that the said Act is having prospective effect instead of retrospective. Para no. 86 and 119 of the above said citation are very much relevant in this regard.

- j. 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 builder 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 07.07.2018, and therefore, no cause of action is arisen in favour of the complainants on 07.07.2018, and thus, the present complaint is barred by law of limitation and the hon'ble authority lacks jurisdiction.
- l. That, as far as Labour Cess, Fire Fighting Works and Haryana VAT and GST are concerned, 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 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.

- m. 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 authority, in para no. 36, it was held by the hon'ble authority 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 precondition 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...."*

n. In light of the above, the present complaint may be dismissed.

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

7. The preliminary objections raised by the respondent regarding jurisdiction of the authority to entertain the present complaint stands rejected. 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. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee 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 promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

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 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 relief sought by the complainants**

**F.I. Possession and delay possession charges**

10. **Relief sought by the complainants:** The below-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and these reliefs are interconnected:

- a. Direct the respondent to pay delay interest on paid amount of Rs 48,94,210.27/- at the rate of 24% till the handing over the physical possession.
  - b. Direct the respondent to complete the project immediately and hand over the possession of the shop with all basic amenities which mention in brochure.
  - c. Direct the respondent to quash the one-sided clauses from builder buyer's agreement.
11. In the present complaint, the complainants intend to continue with the project and are seeking delayed possession charges @ 24% interest on the amount paid. Clause 30 of the builder buyer's 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 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 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 42 months as above in offering the possession of the Unit."*

12. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, 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 favour of the promoters and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoters may make the possession clause irrelevant for the purpose of allottee 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 allottee of his 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 allottee is left with no option but to sign on the dotted lines.

13. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the subject unit within a period of 42 months

from the date of agreement or the date of commencement of construction whichever is later plus grace period of 6 months. The builder buyer's agreement was executed inter se parties on 02.05.2015 and the building plans were approved on 25.07.2014. The builder buyer's agreement being executed later, due date of possession is calculated from date of execution of builder buyer's agreement i.e., 02.05.2015. The period of 42 months expires on 02.11.2018. Since in the present matter the builder buyer's agreement 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 not taken into consideration by the authority as the promoter has still not applied for occupation certificate, this quiescent act of promoter cannot be ignored and 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 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."***



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. Taking the case from another angle, the complainants-allottees were entitled to the delayed possession charges/interest only at the rate of Rs.5/- per sq. ft. per month on super area as per clause 34 of the builder buyer's agreement for the period of such delay; whereas, as per clause 23 of the builder buyer's agreement, the promoter was entitled to interest @ 24% per annum, compounded quarterly. The functions of the authority are to safeguard the interest of the aggrieved person, may be the allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of his dominant position and to exploit the needs of the home buyers. This authority is duty bound to take into consideration the legislative intent i.e., to protect the interest of the consumers/allottees in the real estate sector. The clauses of the buyer's agreement entered into between the parties are one-sided, unfair and unreasonable with respect to the grant of interest for delayed possession. There are various other clauses in the buyer's agreement which give sweeping powers to the promoter to cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the buyer's agreement are ex-facie one-sided, unfair and unreasonable, and the same shall constitute the unfair trade practice on the part of the promoter. These types of discriminatory terms and conditions of the buyer's agreement will not be final and binding.

17. 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%.

18. **Rate of interest to be paid by complainants for delay in making payments:** The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the 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;"*

19. Therefore, interest on the delay payments, if any, 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.

#### **G.II Input credit benefit**

20. **Relief sought by the complainants:** Pass an order for payment of GST amount levied upon the complainants and taken the benefit of input credit by builder.

21. In this context, attention of the authority was drawn to the fact that the legislature while framing the GST law specifically provided for anti-profiteering measures as a check and to maintain the balance in the inflation of cost on the product/services due to change in migration to a new tax regime i.e., GST, by incorporating section 171 in Central Goods and Services Tax Act, 2017.
22. The intention of the legislature was amply clear that the benefit of tax reduction or 'Input Tax Credit' is required to be passed onto the customers in view of section 171 of HGST/CGST Act, 2017. As per the above said provisions of the Act, it is mandatory for the respondent to pass on the benefits of 'Input Tax Credit' by way of commensurate reduction in price of the flat/unit. Accordingly, respondent should reduce the price of the unit/consideration to be realized from the buyer of the flats commensurate with the benefit of ITC received by him.
23. For the projects where the due date of possession was/is after 01.07.2017 i.e., date of coming into force of GST, the builder is entitled for charging GST, but builder has to pass the benefit of input tax credit to the buyer. That in the event the respondent-promoter has not passed the benefit of ITC to the buyers of the unit which is in contravention to the provisions of section 171(1) of the HGST Act, 2017 and has thus committed an offence as per the provisions of section 171 (3A) of the above Act. The allottee shall be at liberty to approach the State Screening Committee Haryana for initiating proceedings under section 171 of the HGST Act against the respondent-promoter. The concerned SGST Commissioner is advised to take necessary action to ensure that

the benefit of ITC is passed on to the allottee in future. Section 171 in Central Goods and Services Tax Act, 2017/ Haryana Goods and Services Tax Act, 2017 is produced as under:

*"Section 171. (1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices."*

24. The final tax liability is to be re-fixed after considering the benefit under section 171 of the SGST/CGST Act. However, the respondent-promoter shall not recover the amount charged towards GST from the allottee till the final calculation by the profiteering committee is provided and shall be payable only till the due date of possession subject to the decision and calculation of the profiteering committee.
25. 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 builder buyer's agreement executed between the parties on 02.05.2015, the possession of the subject apartment was to be delivered within 42 months from the date of execution of agreement (i.e., 02.05.2015) or within 42 months from date of obtaining all the required sanctions and approvals (i.e. building plans approved on 25.07.2014) necessary for commencement of construction, whichever is later. Further, there shall be grace period of 6 months for offering possession of the unit. Builder buyer's agreement being executed later, due date of possession is calculated from date of execution of builder buyer's agreement i.e., 02.05.2015. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 02.11.2018. The

respondent has not offered the possession of the subject unit to the complainants till date. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the builder buyer's 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., 02.11.2018 till the handing over of 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.

**G. Directions of the authority**

26. 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):

- a. 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., 02.11.2018 till the handing over of possession.
- b. The arrears of such interest accrued from 02.11.2018 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.
- c. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

- d. The rate of interest chargeable from the complainants-allottees 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(za) of the Act.
- e. For the projects where the due date of possession was/is after 01.07.2017 i.e., date of coming into force of GST, the builder is entitled to charge GST, but it is obligated to pass the statutory benefits of that input tax credit to the allottee(s) within a reasonable period
- f. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement. The respondent shall not demand/claim holding charges from the complainants/allottees at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

27. Complaint stands disposed of.

28. File be consigned to registry.

  
**(Samir Kumar)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.09.2021

  
**(Vijay Kumar Goyal)**  
Member

Judgement uploaded on 21.12.2021.