

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

Complaint no.:	2372 of 2021
First date of hearing:	01.07.2021
Date of decision:	24.09.2021

1. Mr. Kannan Rajendran,
2. Mrs. Jegatha Kannan
R/o 30 FF, Emaar Emerald Hills Floor, Amber Block,
Golf Course Extension Road, Sector-65, Gurugram,
Haryana- 122101.

Complainants

Versus

M/s Ansal Housing and Construction Ltd.
Office address: 2nd Floor, Ansal Plaza, Sector-1, Near
Vaishali Metro station Vaishali, Ghaziabad, Uttar
Pradesh- 201010.

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Samir Kumar

**Member
Member**

APPEARANCE:

Priyanka Agarwal (Advocate)
Meena Hooda (Advocate)

**Complainants
Respondent**

ORDER

1. The present complaint dated 09.06.2021 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 as provided under the provision of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the 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 part of residential colony
4.	DTCP license no. and validity status	113 of 2008 dated 01.06.2008 valid up to and 71 of 2010 dated 15.09.20210 valid up to
5.	Name of licensee	Buzz Estate Pvt. Ltd. & others.
6.	RERA registration details	Registered vide no. 09 of 2018 dated 08.01.2018 for 2.80 acres Valid up to 31.12.2020
7.	Unit no.	G-037
8.	Unit measuring	516.00 sq. ft.
9.	Date of execution of flat buyer agreement	08.01.2015
10.	Payment plan	Construction linked payment plan
11.	Total consideration	₹ 71,86,383/- (As per builder buyer agreement dated

		08.01.2015 at pg. 25 of complaint)
12.	Total amount paid by the complainants	₹ 65,92,955/- (As per the payment receipts on page 70 of complaint)
13.	Due date of delivery of possession as per clause 30 of the flat buyer's agreement 42 months from the date of execution of agreement or within 42 months from date of obtaining all the required sanctions and approvals necessary for commencement of construction, whichever is later + 6 months grace period. [Page 32 of complaint]	08.07.2018 (42 months from date of execution of builder buyer agreement i.e., 08.01.2015) (Note: Grace period not allowed)
14.	Delay in handing over possession till the date of this order i.e., 24.09.2021	6 years 8 month 16 days
15.	Occupation certificate	30.08.2016
16.	Offer of possession	Not Yet Offered

B. Facts of the complaint

3. The complainants pleaded the complaint on the following facts:

- a. That the complainants are a law-abiding citizen and consumer who has been cheated by the malpractices adopted by the respondent is stated to be a builder and is allegedly carrying out real estate development. Since many years, the complainants being interested in the project because it was a commercial project, and the complainants desired their own commercial space.

- b. That the complainants were subjected to unethical trade practice as well as subject of harassment, developer buyer agreement clause of escalation cost, many hidden charges which will be forcedly imposed on buyer at the time of possession as tactics and practice used by builder guise of a biased, arbitrary and one sided. That the executed developer buyer agreement between respondent and complainants mentioned in developer's representations, DTCP given the licence 71 of 2010 dated 15.09.2010.
- c. That the based-on promises and commitment made by the respondent, complainants booked shop admeasuring 516 sq. Ft., in the commercial project shop/unit no. G-037, "Ansals HUB83 Boulevard", Sector 83, Gurugram, Haryana. The initial booking amount of Rs. 7,00,000/- was paid through cheque. no-101935 dated 14.05.2013. (More than 7years back).
- d. That the respondent to dupe the complainants in their nefarious net even executed developer buyer agreement signed between M/S Ansal Housing Ltd. and Mr Kannan Rajendran & Mrs Jegatha Kannan (complainants) dated 08.01.2015. Respondent create a false belief that the project shall be completed in time bound manner and in the garb of this agreement persistently raised demands with threat of levying interest at a compounded rate of 24% for any delay in payment. Due to persistent demands and threats of levying interest for payment delay they were able to extract huge amount of money from the complainants.
- e. It is submitted that as per clause 23 of the developer buyer agreement the buyer was charged very high interest rate i.e., 24%

- per annum, compounded quarterly. Furthermore, according to clause 24 of agreement if buyer fails to pay due instalments within stipulated period, the respondent could cancel the agreement and forfeit the earnest money, without giving any notice to buyer which in itself is perverse in nature.
- f. The complainants further submit that as per clause 34, the developer/ respondent had very cleverly and specifically accepted a meagre liability to pay Rs. 5/- per sq. ft. per month on the super area for the delay in offering of possession.
- g. That the total cost of the said shop is Rs. 77,78,346.72/-and a sum of Rs 65,92,955/- was paid by the complainants in time bound manner. This amount constituted more than 80% 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.
- h. That as per section 19 (6) the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act) complainants have fulfilled his responsibility in regard to making the necessary payments in the manner and within the time specified in the said agreement. Therefore, the complainants herein are not in breach of any of its terms of the agreement.
- i. That complainants have paid all the instalments timely and deposited Rs. 6592955/- that respondent in an endeavour 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 of the total sale consideration to the time lines, which is not depended or co-related to the finishing of flat and Internal development of facilities amenities and after taking the same respondent have not bothered to any development on the project till date as a whole project not more than 50 % and in term of particular tower just built a super structure only. extracted the huge amount and not spend the money in project is illegal and arbitrary and matter of investigation.

- j. That complainants booked a shop dated 18.05.2013 (more than 7 years ago) and as per developer buyer agreement, respondent/ builder is liable to offer possession on before 08.07.2018 so far (DBA Clause no.30).
- k. That the builder started construction work almost 7 years back and quickly erected a bare structure with the sole intention of taking money from buyer on construction-linked instalments. Respondent/builder are not completing the project and intend to delay for undefined times to complete the project. The 7 years long period has made adverse effect on construction quality of project.
- l. That the respondent has indulged in all kinds of tricks and blatant illegality in taking money through booking and drafting of developer buyer agreement with a malicious and fraudulent intention and caused deliberate and intentional huge mental and physical harassment of the complainants and his family.
- m. That the complainants communicate with respondent and asked for delayed possession respondent show problem of financial crunch other side builder extracted huge amount from

- complainants and given loan to others, and project development abundant create suspicion on builder intentions.
- n. That due to the malafide intentions of the respondent and non-delivery of the flat unit the complainants have accrued huge losses on account of the future of the complainants and their family are rendered dark as the planning with which the complainants invested his hard-earned monies have resulted in sub-zero results and borne thorns instead of bearing fare fruits. Due to delay in possession complainants have incurring huge financial and mental harassment month after month complainants visited respondent's office several times and requested for possession but the respondent did not bother to respond till date.
- o. 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 his entire hard earned savings and taken interest bearing loan in order to buy this home and stands at a crossroads to nowhere. The inconsistent and lethargic manner, in which the respondent conducted its business and their lack of commitment in completing the project on time, has caused the complainants great financial and emotional distress and loss.
- p. It is submitted that the cause of action to file the instant complaint has occurred within the jurisdiction of this hon'ble authority as the apartment which is the subject matter of this complaint is situated

in Sector 83 Gurugram which is within the jurisdiction of this hon'ble authority.

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. 65,92,955/- of 24% till the handing over the physical possession. as per developer buyer agreement builder liable to offer possession on before 08th July 2018.
 - 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 developer buyer 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 other and further order(s) as this hon'ble regulatory authority may deem fit and proper in the facts and circumstances of the present case.
5. Any On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has contested the complaint on the following grounds:
- a. That the present complaint is neither maintainable nor tenable by both law and facts. It is submitted that the present complaint is not maintainable before this hon'ble authority. The complainants have

filed the present complaint seeking refund and interest. It is respectfully submitted that complaints pertaining to refund, compensation and interest are to be decided by the adjudicating Officer under Section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the Act" for short) read with Rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017, (hereinafter referred to as "the Rules") and not by this Hon'ble Authority.

- b. The relief sought in the complaint by the complainants are based on false and frivolous grounds and he is not entitled to any discretionary relief from this hon'ble authority as the person does not come with clean hands may be thrown out without going into the merits of the case.
- c. 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 appended hereto with this reply. The above said project relates and pertains to license no.113 of 2008 dated 01.06.2008 and license no.71 of 2010 dated 15.09.2011, which was received from the Director General, Town & Country Planning, Haryana, Chandigarh over the land measuring 2.60 acres details of the same are given in builder buyer agreement, situated within the revenue estate of village Sihi, Gurugram, which falls within the area of Sector-83, Gurugram-Manesar Urban Development Plan. The building plans of the project have been approved by the DGTCP;

Haryana vide memo No. ZP-952/AD(RA)/2014/16361 dated 25.07.2014. Thereafter, the respondent herein was granted the approval of firefighting scheme from the fire safety point of view of the housing colony measuring 2.60 acres by the Director, Haryana Fire Service, Chandigarh.

- d. The project named "ANSAL HUB 83 BOULEVARD" is being developed on a commercial piece of land measuring an area of 2.60 acres equivalent to 20 Kanal 16 Marla comprised in Khewat No.101, Khata No.110, Rect. No.58, Killa No.20/2 Min (1-3), 20/1/2 Min (0 8), 21/1/1 Min (2-9), Rect. No.59, Killa No.16/1/2 (0-19), 16/2/1 (2 11), 25/1/2 Min (5-17) total land measuring 13 Kanal 7 Marla and Khewat No.292, Khata No.316, Rect. No.59, Killa No.25/1/3 Min (0 5), 25/2 Min (0-8), Rect. No.62, Killa No.5 Min (1-18), total land measuring 2 Kanal 11 Marla, situated win Village Sihi, Tehsil & Dis Gurugram in Sector-83, of Gurugram-Manesa Urban Complex Master Plan 2021 (Project-2). This is part of the residential colony named, Vatika India Next, being developed by Vatika Ltd., in terms of Licence No.113 of 2008 dated 01.06.2008 and Licence No.71 of 2010 dated 15.09.2010 spread over Sector-82, 82A, 83 and 85 of Gurugram - Manesar Urban Complex.
- e. The Vatika Ltd. agreed to sell/transfer the project land together with complete rights/title and interest therein to one M/s Abhash Developers Pvt. Ltd., vide agreement dated 21.01.2013. By a Tripartite Agreement dated 01.04.2013, M/s Abhash Developers Pvt. Ltd., Vatika Ltd. and Samyak Projects Pvt. Ltd. agreed to transfer the project land together with complete rights /title and interest thereon to SSPL. SSPL had entered into an MOU dated

12.04.2013 with Ansal Housing and Construction Ltd. (developer) whereby the development and marketing of the commercial project undertaken by the developer on the project property in terms of the license /permission granted by the DGTCP, Haryana and other government authorities. the building plans for the project have duly been approved by the DGTCP, Haryana vide Memo No. ZP-952/AD (RA)/2014/16361 dated 25.07.2014.

- f. That, since the Real Estate (Regulation of Development) Act, 2016, and the Haryana Real Estate (Regulation of Development) Rules, 2016, came into force, the respondent has decided and has already applied for the registration of the project named ANSALS HUB 83 and ANSALS HUB 83 BOULEVARD with the Hon'ble Authority.
- g. That, even otherwise, the complainants have no locus-standi and cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 08.01.2015, as shall be evident from the submissions made in the following paragraphs of the present reply.
- h. That, since the Real Estate (Regulation of Development) Act, 2016, and the Haryana Real Estate (Regulation of Development) Rules, 2016, came into force, the respondent has decided and have already been applied for the registration of the project named ANSAL HUB 83 BOULEVARD with the Hon'ble Authority.
- i. The complainants approached the respondent sometime in the year 2014, for the purchase of an independent unit in its upcoming residential project "ANSAL HUB 83 BOULEVARD" (hereinafter be

referred to as "the project") situated in Sector-83, Village Sihi, Gurugram. It is submitted that the complainants prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the complainants 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.

- j. That, thereafter, complainants through an application form dated applied to the respondent for provisional allotment of a unit in the project. The complainants, in pursuance of the aforesaid application form, were allotted an independent unit bearing no. G-037, type of unit-shop, sales area 516 sq. Ft., in the project, namely, ANSAL HUB 83 BOULEVARD, situated at Sector-83, Village Sihi, Gurugram. The complainants consciously and wilfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that the complainants shall remit every instalment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainants. The complainants further undertake to be bound by the terms and conditions of the application form and the buyer's agreement as well.
- k. That, it is further submitted that despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. It is also submitted that the construction work of the project is swing

on full mode and the work will be completed within prescribed time period had there been no force majeure.

1. 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 well within time had there been no force majeure circumstances beyond the control of the respondent, there had been several circumstances which were absolutely beyond and out of control of the respondent such as orders. dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble Punjab & Haryana High Court duly passed in Civil Writ Petition No.20032 of 2008 through which the shucking/extraction of water was banned which is the backbone of construction process, simultaneously orders at different dates passed by the Hon'ble National Green Tribunal restraining thereby the excavation work causing air quality index being worse, maybe harmful to the public at large without admitting any liability. apart from these the demonetization is also one of the main factors to delay in giving possession to the home buyers as demonetization caused abrupt stoppage of work in many projects. the payments especially to workers to only by liquid cash. the sudden restriction on withdrawals led the respondent unable to cope with the labor pressure. however, the respondent is carrying its business in letter and spirit of the 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 breakout the surge of global pandemic, named,

COVID-19, has imposed the lockdown throughout India and Haryana State, due to which construction work almost stopped and since March 2020, the respondent could not resume the same because all the labors under the scare of lockdown left for their houses, by leaving the project in mid. The lockdown was beyond the control and command of the respondent.

- m. That, it is submitted that the complaint is not maintainable and tenable under the eyes of law, as the complainants have not approached the hon'ble authority with clean hands and 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 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.
- n. 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 or compensation cannot be called in to aid in derogation and ignorance of the provisions of the buyer's agreement. It is further submitted that the interest and compensation for the alleged delay demanded by the complainants are beyond the scope of the buyer's agreement. The complainants cannot demand any interest or compensation beyond the terms and conditions incorporated in the buyer's agreement. However, in view of the law as laid down by the Hon'ble Bombay High Court in case titled as *Neelkamal Realtors Suburban Pvt. Ltd. Vs. Union of India* published in 2018(1) RCR(C) 298, the liberty to the promoters /developers has been given U/s 4 to intimate fresh date of offer of possession while complying the provisions of Section 3 of the RERA Act as it was opined that the said Act, namely, RERA, is having prospective effect instead of retrospective. Para No.86 and 119 of the above said citation are very much relevant in this regard.

- o. 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.

- p. 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 08.07.2018, and therefore, no cause of action is arisen in favor of the complainants on 08.07.2018, and thus, the present complaint is barred by law of limitation and the hon'ble authority lacks jurisdiction.
- q. That, it is also a conceded and admitted fact that the project related to the present complaint has not yet been registered with RERA and as such the hon'ble authority lacks jurisdiction to entertain the present complaint.
- r. That, it is also worthwhile to mention here that the allegations having been levelled in this complaint are with regard to cheating and alluring which only can be decided by the Hon'ble Civil Court and in these scenarios the Hon'ble Authority also lacks jurisdiction.
- s. That, it is submitted that several allottees, including the complainants, 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. It

is further submitted that the respondent had applied for registration with the Authority of the said project by giving afresh date for offering of possession. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainants are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

- t. That, as far as labour cess, firefighting works and HVAT 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 builder 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 their 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.
- u. That, it would be relevant to mention here in case titled as **Mr. Abhishek Mohan Gupta Vs. M/s 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 the authority came across that as per clause 13.3 the respondent has agreed to offer the possession of the said apartment within a period of 42 months from the date

of approval of building plans and/or fulfilment of preconditions imposed thereunder + 180 days grace period. The building plan for the project in question was approved on 23.07.2013 which contained a precondition under clause 17(iv) that respondent should obtain clearance from Ministry of Environment and Forest, Government of India before starting construction of project. The said environment clearance for the project in question was granted on 12.12.2013 containing a pre-condition of obtaining fire safety plan duly approved by fire department before starting construction. The respondent obtained the said approval on 27.11.2014. Therefore, the due date of possession comes out to be 27.11.2018 and the possession has been delayed by 3 months and 13 days till the date of decision....."

E. Jurisdiction of the authority

7. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I. Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

E.II. Subject matter jurisdiction

9. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the relief sought by the complainants

F.I. Direct the respondent to pay delay interest on paid amount of Rs. 65,92,955/- of 24% till the handing over the physical possession. as per developer buyer agreement builder liable to offer possession on before 08th July 2018.

10. In the present complaint, the complainants intend to continue with the project and is seeking delayed possession charges @ 24% interest on the amount paid. Clause 30 of the flat buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below: -

"30

The developer shall offer possession of the unit any time, within a period of 42 months from the date of execution of the 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."

11. 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 application, and the complainants not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoters. The drafting of this

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

Admissibility of grace period: The promoter has proposed to hand over the possession of the apartment within a period of 42 months plus 6 months from date of agreement or the date of commencement of construction which whichever is later. The due date of possession is calculated from the date of execution of agreement i.e., 08.01.2015. The period of 42 months expired on 08.07.2018. Since in the present matter the BBA incorporates qualified reason for grace period/extended period of 6 months in the possession clause for obtaining occupation certificate subject to force majeure. The force majeure reasons provided by the promoter are not taken into consideration by the authority as the defence of the respondent is struck off moreover, 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.

12. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottees does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."

13. 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.
14. 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%.
15. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, 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;"*

16. 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.

F.II. Direct the respondent to quash the one-sided clauses from developer buyer agreement.

17. The complainants have not mentioned one sided clause particularly in its complaint except from the interest charged by the respondent on delayed payment @ 18% p.a. The explanation regarding this is already provided in the above stated relief.

F.III. Pass an order for payment of GST amount levied upon the Complainants and taken the benefit of input credit by builder.

18. 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/ Haryana Goods and Services Tax Act, 2017, the same is reproduced herein below:

"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."

19. 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.
20. 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 allottees 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 allottees 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."

21. The final tax liability is to be re-fixed after considering the benefit u/s 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.
22. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 30 of the agreement executed between the parties on 08.01.2015, the possession of the subject apartment was to be delivered within 42 months from the date of commencement of construction. The period of 42 months expired on 08.07.2018. 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 08.07.2018. 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., 08.07.2018 till the actual 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.

G. Directions of the authority


23. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions entrusted to the authority under section 34(f):

- i. The respondent is directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay from the due date of possession i.e., 08.07.2018 till the actual handing over of the possession.
- ii. The arrears of such interest accrued from 08.07.2018 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 10th 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 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.
- v. The respondents shall not charge anything from the complainant which is not the part of the agreement.

- vi. 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.
- vii. The cost imposed during the proceedings on either party be included in the decree sheet.

24. Complaint stands disposed of.

25. File be consigned to registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.09.2021

Judgement uploaded on 21.12.2021.


(Vijay Kumar Goyal)

Member


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