

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

Complaint no.:	1410 of 2021
First date of hearing:	01.07.2021
Date of decision:	24.09.2021

1. Mr. Jagdeep Tomar,
2. Mr. Manoj Sehrawat,
RR/o 44, Malikpur kohi Rangpuri, New Delhi- 110037.
L-1A, Mahipalpur Extension, New Delhi- 110037.

Complainants

Versus

M/s Ansal Housing and Construction Ltd.
Office address: 15, UGF, Indraprakash, 21, Barkhamba
Road, New Delhi- 110001.

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Samir Kumar

Member
Member

APPEARANCE:

Sanjeev Sharma (Advocate)
Meena Hooda (Advocate)

Complainants
Respondent

ORDER

1. The present complaint dated 12.03.2021 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 Heights, 86", Sector-86 Gurugram
2.	Project area	12.843 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	48 of 2011 dated 29.05.2011 valid upto 28.05.2017
5.	Name of licensee	Resolve Estate Pvt. Ltd.
6.	RERA registration details	Not registered
7.	Unit no.	H-0805
8.	Unit measuring	1360.00 sq. ft.
9.	Date of execution of flat buyer agreement	14.08.2012 (Page no. 25 of complaint)
10.	Date of endorsement	27.08.2012 (Annexure P-2 on page no.43 of complaint)
11.	Payment plan	Construction linked payment plan
12.	Total consideration	₹ 53,58,324/- (As per builder buyer agreement dated 14.08.2012 at pg. 41 of complaint)

13.	Total amount paid by the complainants	₹ 50,81,698/- (As per the call notice dated 26.10.2016 on pg-47 of complaint)
14.	Due date of delivery of possession as per clause 31 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 33 of complaint]	14.02.2016 (42 months from date of execution of builder buyer agreement i.e., 14.08.2012) (Note: Grace period not allowed)
15.	Delay in handing over possession till the date of this order i.e., 24.09.2021	5 years 7 months 10 days
16.	Status of the project	Ongoing
17.	Occupation certificate	Not Obtained
18.	Offer of possession	Not yet offered

B. Facts of the complaint

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

- a. That the respondent / promoter launched a project namely "**Ansal Heights, 86, sector 86 Gurgaon (now Gurugram)**" which was proposed to be developed on a land measuring 12.843 acre situated in revenue estate of village Nawada Fatehpur of Gurgaon, Haryana presently part of residential sector 86 of the Gurgaon

Manesar urban plan 2021(now situated in sector- 86, Gurugram, Haryana.

- b. That during the month of July 2012, the complainants (who are close relatives) were searching a flat in the same vicinity, where the respondent as promoter were developing the project as mentioned above. Keeping in view of the fact that the respondent-promoter is having a good name in the field of real estate and earlier also the respondent have launched various residential projects for allotment of flats to the general public under various schemes, the complainants came to know further details about the said project and after inquiring from the officials of the respondent-promoters, the complainants believed the assurances of the respondents that the said project shall be completed in a time bound manner with excellent construction and infrastructure. Believing on the assurances of the officials of the respondent the complainants showed their interest in a two-bedroom flat. The complainants at that time came to know about one Shri. Pardeep Nain who originally/ initially booked a two-bedroom flat that is unit no. 0805 in tower no. 'h', 8th floor having residential super area 1360 sq. ft. A flat buyer agreement of the said flat was also executed on 14th August 2012 with the original allottee Shri. Pradeep Nain with detailed terms and conditions agreed in respect of the said flat. The original allottee was not interested in continuing the said project and therefore the said flat was purchased by the complainants on the same terms and conditions as agreed on 14 August 2012 at same rates. The respondents-promoter after completion of documentary formalities by the original allottee Shri. Pardeep Nain

and the complainants, transferred the said flat in the names of the complainants vide their letter dated 27.08.2012.

- c. That as per the agreement the complainants were allotted flat/residential unit no. 0805 more particularly in tower no. 'h', 8th floor having, super area 1360 sq. ft. at a total basic price of Rs. 3565.59/- sq. ft. amounting to Rs. 48,49,200/- plus other charges as mentioned in flat buyer agreement dated 14 August 2012. The specific clause no. 31 of the said agreement provides that possession of said flat shall be offered within maximum 48 months from the date of execution of the flat buyer agreement. The clause 31 provides as under:

"The developer shall offer possession of the unit any time, within 42 months from the date of execution of agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all the dues by buyer and subject to force-majeure circumstances as described in clause 32. Further, there shall be a grace of 6 months allowed to the developer over and above the period of 42 months as above in offering the possession of the unit."

- d. Therefore, the possession should have been handed over till 13 August 2016. Unfortunately, despite timely payment, the project is incomplete without any basic amenities and whenever inquired from the officials of the respondent-promoter at the site and at their head office at Barakhamba Road Connaught place, New Delhi no satisfactory reply was given by the respondent-promoter. That after purchasing of the said flat and since 27.08.2012, the complainants always paid the amount whenever demanded by the respondent. Up till 26 October 2016 the complainants have paid an amount of Rs. 50,81,698.05 as stated in the letter dated 26.10.2016 issued by the respondent. After the said the complainants further

paid an amount of Rs.2,30,540.28 on 11.11.2016. Thereafter a sum of Rs. 33,521/- was demanded for some difference in VAT amount and the complainants on 14.03.2017 paid the said amount. Therefore, in total the complainants have a sum of **Rs. 53,45,759/-** (fifty-three lakhs forty-five thousand seven hundred fifty-nine rupees only) to the respondent till date.

- e. That even after the specific terms and conditions settled in the buyer's agreement, the respondent failed to hand over the possession within the stipulated period of four years and since 13.08.2016, the respondent is delaying things on one pretext or the other. The complainants have also visited the office and the construction site of the respondent/ promoter, but the project is incomplete without any basic amenities.
- f. That as per the clause 31 of the agreement, the possession of said apartment was to be handed over to complainants within 48 months from the date of signing of the flat buyer agreement but the same is not yet ready for habitation of a human being. That complainants on various occasions have visited at respondent's office for delivery of possession and completion of apartment and project, but unfortunately each and every time, the respondent replied with lame excuses and till date, neither the project is complete, nor the respondent/ promoter could give the basic amenities in the project and neither the project is in the habitable conditions. Complainants are also apprehending that respondent is also not having all clearance and permissions from the concerned authorities and rather respondent/promoter have cheated the complainants as well as other buyers of the project.

- g. That respondent has failed to provide the flats till date in habitable conditions and the respondent enjoyed the valuable amount given by the complainants for their personal benefits. The respondent/promoter has dishonestly converted above said amount to some other projects rather completing the project in question in a time bound manner and as per the terms and condition in the flat-buyer agreement.
- h. That complainants have suffered huge pecuniary loss, harassment, mental agony as well as physical pain, difficulties merely owing to the false and inducive promises, representation and deficiency and negligent services on the part of the respondent/promoter.
- i. That the complainants having left with no other alternative sent an email dated- 27.09.2020 and called upon the respondent/promoter to refund the amount paid by the complainants along with interest @ 18% P.A and rupees ten lakhs for mental agony and harassment. But unfortunately, the respondent failed to reply the same.
- j. That having left with no other alternative the complainants through their counsel sent legal cum demand notice dated 02.11.2020 by way of registered post. The complainants called upon the respondents to refund an amount of Rs.53,45,759 along with interest @18 % P.A and a sum of rupees ten lakhs toward mental torture, harassment and agony. The respondent/promoter instead of refunding the amount paid by the complainants sent a false and vague reply dated 18.11.2020.
- k. That the cause of action to file the complaint is continuing in nature as the respondent/promoter has failed to comply with the terms



and condition of the flat-buyer agreement dated- 14.08.2012 and failed to deliver the possession of the flat in question as per the settled terms and neither could refund the amount taken form the complainants along with interest. Therefore, the cause of action is still continuing in nature.

- l. That the complainant-petitioner has diligently discharged all their obligations as per the apartment buyer's agreement, whereas the respondent-promoter has failed to perform their obligations stipulated in the agreement. The complainant-petitioner is willing to pay the outstanding amount if any after the deduction of interest Liable to be paid to the complainant-petitioner on account of delayed possession.
- m. That the respondent-promoter has failed to develop the project as promised at the time of initial allotment. The complainants-petitioners have invested their hard-earned earning in the project based on assurances given by the respondent-promoter; however, they have been harassed and aghast. The respondent-promoter has failed to address the concerns of the petitioners-complainants even after several requests; thus, the petitioners-complainants have lost faith.

C. Relief sought by the complainants:

4. The complainants have sought following reliefs:
 - a. Direct the respondent to handover the possession in habitable condition with time bound manner or refund the paid amount of Rs.53,45,759 along with interest @18 % P.A of the flat no. H- 0805 in Ansal Heights 86 in sector- 86, Gurgram Haryana.

- b. To pay interest for the delay in handing over possession from the due date i.e., 13.08.2016 as per agreement.
- c. The complainants are seeking compensation of Rs.10,00,000/- for mental agony, harassment and financial losses.
- d. The complainants are seeking Rs.2,00,000/- as cost of litigation.
- e. Pass such order of further orders as this hon'ble authority may deem fit and proper in the facts and circumstances of the present case.

5. On the date of hearing, the authority explained to the respondents/promoters 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. 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, compensation, refund and interest. It is respectfully submitted that complaints pertaining to compensation, refund 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(1) of the Haryana Real Estate (Regulation and Development) Rules, 2017, (hereinafter referred to as "the Rules") and not by this Hon'ble Authority. The present complaint is liable to be dismissed on this ground alone.

- b. The relief sought in the complaint by complainants is based on false and frivolous grounds and they are 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. However, the true facts of the case are that the land of the project is owned and possessed by the respondent through its subsidiary M/s Resolve Estates Pvt. Ltd., having its Registered Office at 153, Okhla Industrial Estate, Phase-III, New Delhi-110020. The said company has under an arrangement granted, conveyed and transferred all its rights, entitlement and interest in the development, construction and ownership of the total permissible FSI on the land aforesaid to M/s Optus Corona Developers Pvt. Ltd., having registered office at J 181, Saket, New Delhi. The said M/s Resolve Estates Pvt. Ltd. has further under an arrangement granted, conveyed and transferred all its rights, entitlement and interest in the development, construction and ownership of the total permissible FSI on the land aforesaid to M/s Samyak Project Pvt. Ltd., having its registered office at 111, First Floor, Antriksh Bhawan, K.G. Marg, and New Delhi.
- c. 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 flat buyer's agreement dated 14.08.2012, as shall be evident from the submissions made in the following paragraphs of the present reply.

- d. 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 relates to License no.48 of 2011 dated 29.05.2011 received from the Director General Town and Country Planning (DGTCP), Haryana, Chandigarh over the land measuring 12.843 acres comprising in Rect. No.19, Killa No.3 Min (6-0), 4 (8-0), 5 (8-0), 8/1 (0-8), 13/2 (0-8), 1/1 Min (0-4), 17/1 (17/1 (5-14), 24/2/1 (1-8), 25 (8-0), 7 (8-0), 14 (8-0), 17/2 Min (0-18), Rect. No.14, Killa No.19 (8-0), 20 (8-0), Rect. No.15, Killa No.14/2 (3-7), 16 (8-0), 17 (8-0), 24/1 (4-8), 22/2 Min (0-5), 23 Min (7-15) situated within the revenue estate of Village Nawada-Fatehpur, Gurugram, which falls within Sector-86, Gurugram, Manesar-Urban Development Plan. The building plans of the project have been approved by the DGTCP, Haryana vide memo no. ZP-781/D/(BS)/2013/50373 dated 03.09.2013. Thereafter, respondent herein was granted the approval of firefighting scheme from the fire safety point of view of the housing colony measuring 12.843 acres by the Director, Haryana Fire Service, Haryana, Chandigarh vide letter memo no. DFS/F.A./2015/326/66492 dated 24.11.2015.
- e. 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

been applied for the registration of the project named ANSALS HEIGHTS with the authority.

- f. The complainants approached the respondent sometime in the year 2011, for the purchase of an independent unit in its upcoming, residential project "ANSALS HEIGHTS" (hereinafter be referred to as "the project") situated in Sector-86, Village Nawada-Fatehpur, 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 unit, un-influenced in any manner by the respondent.
- g. That, thereafter, complainants through an application form dated 09.12.2011, applied to the respondent for provisional allotment of a unit in the project. The complainants in pursuance of the aforesaid application form, were allotted the unit bearing no. H-0805, type of unit 2 BHK, sales area 1360 sq. ft., (126.35 sq. mtrs.), in tower -H, in the project, namely, ANSALS HEIGHTS, situated at Sector 86, Village Nawada Fatehpur, Gurugram. The complainant 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 application form and the flat buyer's agreement as well.

- h. 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.
- i. 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, 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 flat buyer's agreement as well as in compliance of other local bodies of Haryana Government as well as Government of Haryana or the Centre Government and autonomous body, 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 is almost stopped 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.

- j. 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 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.

- k. 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, compensation and interest cannot be called in to aid in derogation and ignorance of the provisions of the flat buyer's agreement. It is further submitted that the interest and compensation for the alleged delay demanded by the complainants is beyond the scope of the flat buyer's agreement. The complainants cannot demand any interest or compensation beyond the terms and conditions incorporated in the flat 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 with 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.

- i. That, without prejudice to the contentions of the respondent, it is submitted that the present complaint is barred by law of limitation. The complainants have alleged that due date of possession in respect of the said unit was 13.08.2016, and therefore, no cause of action is arisen in favor of the complainants on 13.08.2016, therefore, the present complaint is barred by law of limitation and the hon'ble authority lacks jurisdiction.
- m. That, it is submitted that several allottee(s) including complainants, have defaulted in timely remittance of payment of instalment which was/is 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 earnestly pursued the development of the project in question and has constructed the project in question as expeditiously as possible. 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.
- n. That, as far as labor cess, firefighting 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 flat buyer's agreement,

vide which complainants were agreed to pay in addition to basic sale price of the said unit he/she/they is/are liable to pay EDC, IDC together with all the applicable interest, incidental and other charges inclusive of all interest on the requisite bank guarantees for EDC, IDC or any other statutory demand etc. The complainants further agreed to pay his proportionate share in any future enhancement additional demand raised by authorities for these charges even if such additional demand raise after sale deed has been executed.

7. Copies of all the documents have been filed and placed on record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of theses undisputed documents.

E. Jurisdiction of the authority

8. 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

9. 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

10. 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 handover the possession in habitable condition with time bound manner or refund the paid amount of Rs.53,45,759 along with interest @18 % P.A of the flat no. H-0805 in Ansal Heights 86 in sector- 86, Gurgram Haryana.

11. In the present complaint, the complainants intend to continue with the project and is seeking delayed possession charges @ 18% interest on the amount paid. Clause 31 of the flat buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below: -

"31

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 32. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 42 months as above in offering the possession of the unit."

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 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 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.

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., 14.08.2012. The period of 42 months expired on 14.02.2016. 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.

13. **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."

14. 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.
15. 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%.
16. 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;"

17. 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. The complainants are seeking compensation of Rs.10,00,000/- for mental agony, harassment and financial losses.

F.III. The complainant is seeking Rs.2,00,000/- as cost of litigation.

18. The complainants are claiming compensation in the above-mentioned reliefs. The authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee can claim. For claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainants may file a separate complaint before adjudicating officer under section 31 read with section 71 of the Act and rule 29 of the rules.
19. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 31 of the agreement executed between the parties on 14.08.2012, the possession of the subject apartment was to be delivered within 42 months from the date of execution of the agreement. The period of 42 months expired on 14.02.2016. As far as

grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession is 14.02.2016. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 14.02.2016 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

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

- i. The respondent is directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay from the due date of possession i.e., 14.02.2016 till the actual handing over of the possession.
- ii. The arrears of such interest accrued from 14.02.2016 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 complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iv. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
 - v. The respondent shall not charge anything from the complainants which is not the part of the agreement.
 - vi. The cost imposed during the proceedings on either parties be included in the decree sheet.
21. Complaint stands disposed of.
22. File be consigned to registry.


(Samir Kumar)

Member


(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.09.2021

Judgement uploaded on 21.12.2021.