

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

Complaint no.:	1436 of 2021
First date of hearing:	01.07.2021
Date of decision:	24.09.2021

1. Mr. Vinay Gupta,
2. Mr. Vivek Gupta,
R/o House No. 1922, Sector-4, Gurugram, Haryana-
122001.

Complainants

Versus

M/s Ansal Housing and Construction Ltd.
Office address: 606, 6th floor, Indraprakash, 21,
Barkhamba Road, New Delhi- 110001.

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Samir Kumar

**Member
Member**

APPEARANCE:

Abhay Jain (Advocate)
Meena Hooda (Advocate)

Complainants
Respondent

ORDER

1. The present complaint dated 24.03.2021 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, 92", Sector-92, Gurugram
2.	Project area	10.563 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	76 of 2010 dated 01.10.2010 valid up to 30.09.2020
5.	Name of licensee	JSG Builders Pvt. Ltd. & anr.
6.	RERA registration details	Not registered
7.	Unit no.	E-303
8.	Unit measuring	1320 sq. ft.
9.	Date of execution of flat buyer agreement	18.10.2012
10.	Payment plan	Construction link payment plan
11.	Total consideration	₹ 41,23,800/- (As per builder buyer agreement dated 18.10.2012 at pg. 55 of complaint)
12.	Total amount paid by the complainants	₹ 45,00,567/- (As per customer ledger at pg-36 of complaint)

13.	Due date of delivery of possession as per clause 29 of the flat buyer's agreement 36 months from the date of execution of agreement or within 36 months from date of obtaining all the required sanctions and approvals necessary for commencement of construction, whichever is later + 6 months grace period. [Page 47 of complaint]	18.10.2015 (36 months from date of execution of builder buyer agreement i.e., 18.10.2012) (Note: Grace period not allowed)
14.	Delay in handing over possession till the date of this order i.e., 24.09.2021	5 years 11 months 6 days
15.	Occupation certificate	Not Known

B. Facts of the complaint

3. The complainants pleaded the complaint on the following facts:
- That the respondent is a company, working in field of construction and development of residential as well as commercial projects across the country by the name of Ansal Housing & Construction Ltd.
 - The respondent published very attractive brochure, highlighting the group housing colony called 'Ansal Heights' at Sector 92, Gurugram, Haryana, the respondent claimed to be one of the best and finest in construction and one of the leading real estate developers of the country, in order to lure prospective customers to buy flats/apartments in the project including the complainants.

There are fraudulent representations, incorrect and false statements in the brochure. The complainants invite attention of the honorable authority, Gurugram to section 12 of the Act, 2016. The project was launched in 2010 with the promise to deliver the possession on time and huge funds were collected over the period by the respondent.

Section 12 of the Act, 2016 is reproduced as under:

"Section 12. Obligations of promoter regarding veracity of the advertisement or prospectus. – Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:

Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act."

- c. The complainants were approached by the sale representatives of respondent, who made tall claims about the project 'Ansal Heights" as the world class project. The complainants were invited to the sales office and were lavishly entertained and promises were made to them that the possession of their apartment would be handed over in time including that of parking, horticulture, club and other common areas. The complainants were impressed by their oral statements and representations and ultimately lured to pay a total of Rs.3,00,000/- as the booking amount of the apartment. The customer ledger dated 7th July 2020 issued by the respondent indicates all the transactions.

- d. The complainants further made regular payments as and when demanded by the respondent and paid a total sum of Rs.12,97,937/- till 27th July 2012.
- e. The respondent violated Section 13 of the Act, 2016 by taking more than ten per cent (10%) cost of the apartment before the execution of the apartment buyer's agreement. The total cost of the apartment is Rs.45,00,567/- (rupees forty-five lakh five hundred and sixty-seven only) including EDC, IDC, Club Membership, PLC, etc. while the respondent had collected a total sum of Rs.12,97,937/-, almost 29% of the total cost of the apartment till July 2012.

The Section 13 the Act, 2016 is reproduced as:

"Section 13. No deposit or advance to be taken by promoter without first entering into agreement for sale.

A promoter shall not accept a sum more than ten percent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.

The agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external development works, the dates and the manner by which payments towards the cost of the apartment, plot or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed."

- f. On 18 October 2012, the apartment buyer's agreement was executed, between the complainants and the respondent, along with other owners of the land, towards purchase of the apartment no. E-303, third Floor, measuring 1320 square feet of super area in project 'Ansal Heights' at Sector 92, Gurugram, Haryana, spread

over the land measuring 10.563 acres situated in revenue estate of village Wazirpur, District Gurugram, Haryana. The date of possession as per the Agreement was 18 April 2016, calculated 36 months plus grace period of 6 months from the date of signing the agreement of the apartment.

- g. The complainants paid all payable amounts, as and when demanded by the respondent, a total of Rs.41,46,505/- (rupees forty-one lakh forty-six thousand five hundred and five only) for the apartment against the total consideration of Rs.45,00,567/- (rupees forty-five lakh five hundred and sixty-seven only) of the apartment. But even after taking more than 92% (ninety two percent) cost of the apartment, the respondent has failed to offer the legitimate possession of the apartment till date.
- h. On 10 December 2018, the respondent sent an illegal and unlawful 'offer of possession for fit outs' to the complainants. It was beyond belief of the complainants that the respondent could not timely receive the occupation certificate (OC) and offer a legitimate, legal and lawful possession to the complainants.
- i. The respondent is responsible and accountable to the terms and conditions prescribed in the apartment buyer's agreement. The respondent is bound to pay the interest on the deposited amount to the complainants if there is a delay in handing over the possession of the apartment. Section 11 (4) (a) of the Act, 2016 states:

"Section 11. Functions and Duties of the Promoter -

4) The promoter shall -

(a) be responsible for all obligations, responsibilities and functions under the provisions of the Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale..."

- j. The respondent has, in an unfair manner, siphoned off funds meant for the project and utilized same for its own benefit for no cost. The respondent being builder, promoter, colonizer and developer, whenever in need of funds from bankers or investors ordinarily has to pay a heavy interest per annum. However, in the present scenario, the respondent utilized funds collected from the complainants and other buyers for its own good in other projects, being developed by the respondent.
- k. The complainants have lost confidence and in fact has got no trust left in the respondent, as the respondent has deliberately and willfully indulged in undue enrichment, by cheating the complainants besides being guilty of indulging in unfair trade practices and deficiency in services in not delivering the legitimate and rightful possession of the apartment in time and then remaining non-responsive to the requisitions of the complainants. Hence this complaint before the honorable authority.

C. Relief sought by the complainants:

4. The complainants have sought following reliefs:
- Direct the respondent to complete the construction of the flat along with common area facilities and amenities like club, car parking slot, parks, etc. immediately.
 - Direct the respondent to handover the legal and rightful possession of the flat to the complainants, after receiving the occupation certificate (OC) and other required approvals from competent authorities.
 - Direct the respondent to pay interest for every month of delay in handing over the possession of the flat since 18th April 2016 to the complainants, on the amount taken from the complainants towards

- sale consideration amount for the aforesaid flat, with interest at the prescribed rate as per the Act, 2016, till the respondent hands over the legal and rightful possession of the flat to the complainants.
- d. Direct the respondent to revoke/cancel/withdraw/waive off the various charges imposed by the respondent illegally, unlawfully and fraudulently such as amount of (a) firefighting charge, (b) covered car parking charge, (c) electricity meter cost charge, (d) power backup charge, (e) external electrification charge, (f) corner cum park facing/adjoining charge, (g) floor PLC charge, (h) value added tax, service tax, goods and services tax, etc. being charged on the flat of the complainants.
- e. Direct the respondent to not charge maintenance and holding charges until the legitimate, rightful, legal and lawful possession of the flat is handed over to the complainants.
- f. Direct the respondent to pay legal expenses of Rs.1,00,000/ (one lakh) incurred by the complainants.
- g. Any other relief/order or direction, which this hon'ble authority may, deems fit and proper considering the facts and circumstances of the present complaint.
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. Notice to the promoter/respondent through speed post and through e-mail address (rera@ansals.com) was sent; the delivery report of which shows that delivery was completed. Despite service of notice, the

promoter/respondent has failed to file a reply within stipulated time period. However, the respondent represented through Adv. Meena Hooda on behalf of the respondent company have marked attendance on 24.09.2021. This is clear evidence that the service was completed. Despite this the respondent has not chosen to file any reply accordingly, the defence of the respondent is struck off.

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 complete the construction of the flat along with common area facilities and amenities like club, car parking slot, parks, etc. immediately.**
- F.II Direct the respondent to handover the legal and rightful possession of the flat to the complainants, after receiving the occupation certificate (OC) and other required approvals from competent authorities.**
- F.III. Direct the respondent to pay interest for every month of delay in handing over the possession of the flat since 18th April 2016 to the complainants, on the amount taken from the complainants towards sale consideration amount for the aforesaid flat, with interest at the prescribed rate as per the Act, 2016, till the respondent hands over the legal and rightful possession of the flat to the complainants.**
10. In the present complaint, the complainants intend to continue with the project and is seeking delayed possession charges at prescribed rate of interest on the amount paid. Clause 29 of the flat buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below: -
- "29The developer shall offer possession of the unit any time, within a period of 36 months from the date of execution of the agreement or within 36 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 30. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 36 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 favor 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 36 months plus 6 months from date of agreement or the date of commencement of construction whichever is later. The period of 36 months expired on 18.10.2015. 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. Since, there is no reply from promoter quoting such reasons neither any such reason has been contested by the respondent during the hearing. Accordingly, the authority disallows this grace period of 6 months 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 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."

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 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;"

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.IV. Direct the respondent to revoke/cancel/withdraw/waive off the various charges imposed by the respondent illegally, unlawfully and fraudulently such as amount of (a) firefighting charge, (b) covered car parking charge, (c) electricity meter cost charge, (d) power backup charge, (e) external electrification charge, (f) corner cum park facing/adjoining charge, (g) floor PLC charge, (h) value added tax, service tax, goods and services tax, etc. being charged on the flat of the complainants.

17. As far as issue regarding parking is concerned, the authority is of the opinion that open parking spaces cannot be sold/charged by the promoter both before and after coming into force of the Act. However as far as issue regarding covered car parking is concerned where the said agreements have been entered into before coming into force the Act, the matter is to be dealt with as per the provisions of the builder buyer's agreement subject to that the allotted parking area is not included in super area.

18. In the present complaint, the respondent has charged Rs.3,00,000/- towards covered car park as per clause 20 and the same is reproduced below:

"In view of the present Allotment the Buyer shall also additionally pay to the Developer an amount of Rs 3,00,000/- (Rupees three lakhs) towards grant of exclusive right to use Covered Car parking space(s). Right to use one Car Parking space is Mandatory for every 2BHK and 3BHK Apartment. The requirement of number of car parking to be used mandatorily may be changed by the Developer and the Buyer shall be required to pay these charges accordingly.

The Buyer hereby undertakes to use the said allotted space only as car parking and for no other purposes. It is agreed and understood that in the event of transfer of unit, such right of exclusive use of the car parking area shall automatically stand transferred to the transferee of the unit. In case right to use any additional parking space is demanded by the Buyer the same shall be provided by the developer to the Buyer as per the availability on payment of such charges as may be demanded by the developer at relevant point of time. It is made clear to the Buyer that the Buyer shall have no right, title or interest in other unreserved covered/open parking space available to the visitor/other occupant/users and such parking spaces shall be under the exclusive ownership of the developer and shall be dealt with by the developer at its own discretion as it may deem fit. The Buyer further agrees that the reserved open/covered parking space allotted to him/her for exclusive use shall be understood to be together with the apartment and the same shall not have independent entity detached from the said apartment. The Buyer undertakes not to sell transfer/deal with the reserved parking space independent of the said apartment

19. In the instant matter, the subject unit was allotted to the complainants vide builder buyer agreement dated 18.10.2012 and as per the said agreement, the respondent had charged a sum of Rs.3,00,000/- on account of car parking charges. As per clause 20 of the agreement the allottee had agreed to pay the cost of covered car parking charges over and above the basic sale price. The cost of parking of Rs.3,00,000/- has been charged exclusive to the basic price of the unit as per the terms of the agreement. The cost of parking of Rs.3,00,000/- has already been included in the total sale consideration and the same is charged as per

the buyer's agreement. Accordingly, the promoter is justified in charging the same

20. With respect to the electricity connection charges, water connection charges, sewerage connection charges, there is no doubt that all these charges are payable to various departments for obtaining service connections from the concerned departments including security deposit for sanction and release of such connections in the name of the allottee and are payable by the allottee. These connections are applied on behalf of the allottee and allottee has to make payment to the concerned department on actual basis. In case instead of paying individually for the unit if the builder has paid composite payment in respect of the abovesaid connections including security deposit provided to the units, then the promoters will be entitled to recover the actual charges paid to the concerned department from the allottee on pro-rata basis i.e., depending upon the area of the flat allotted to the complainants viz- à-viz the total area of the particular project. The complainants/allottees will also be entitled to get proof of all such payment to the concerned department along with composite proportionate to his unit before making payment under the relevant head. In case of bulk supply of electricity, the concerned department/agency releases connection with certain terms and conditions of bulk supply and these are to be abided by the allottee. The allottees were also asked to give undertaking not to apply directly to any other electric supply company in his individual capacity for additional load of electricity other than being that provided through bulk supply arrangement. In this case, apart from bearing proportionate charges for bulk supply of electricity connection to the project, the allottees have

also to bear the individual meter connection expenditure from the bulk supply point to his unit.

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/ 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"

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 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.

F.V. Direct the respondent to not charge maintenance and holding charges until the legitimate, rightful, legal and lawful possession of the flat is handed over to the complainants.

25. The Act mandates under section 11(4)(d), that the developer will be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees. Section 19(6) of the Act also states that every allottee, who has entered into an agreement for sale, to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale/the builder buyer's agreement and shall pay within stipulated time and appointed place, the

share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent and other charges, if any.

26. Maintenance charges essentially encompass all the basic infrastructure and amenities like parks, elevators, emergency exits, fire and safety, parking facilities, common areas, and centrally controlled services like electricity and water among others. Initially, the upkeep of these facilities is the responsibility of the builder who collects the maintenance fee from the residents. Once a resident's association takes shape, this duty falls upon them, and they are allowed to change or introduce new rules for consistently improving maintenance. In the absence of an association or a society, the builder continues to be in charge of maintenance. Usually, maintenance fees are charged on per flat or per square foot basis. Advance maintenance charges on the other hand accounts for the maintenance charges that builder incurs while maintaining the project before the liability gets shifted to association of owners. Builders generally demand advance maintenance charges for 6 months to 2 years in one go on the pretext that regular follow up with owners is not feasible and practical in case of ongoing projects wherein OC has been granted but CC is still pending.
27. Keeping in view the facts above, the authority deems fit that the respondent is right in demanding advance maintenance charges at the rate prescribed therein at the time of offer of possession in view of the judgements (supra). However, the respondent shall not demand the advance maintenance charges for more than one (1) year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.

28. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed.
29. 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 29 of the agreement executed between the parties on 18.10.2012, the possession of the subject apartment was to be delivered within 36 months from the date of execution of agreement. The period of 36 months expired on 18.10.2015. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession is 18.10.2015. The respondent has not yet offered the possession of the subject apartment. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 18.10.2015 till the actual handing over of possession of unit, 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

30. 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., 18.10.2015 till the actual handing over of possession.
- ii. The arrears of such interest accrued from 18.10.2015 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 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 complainants which is not the part of the agreement. However, holding charges

shall not be charged by the promoters at any point of time even after being part of agreement as per law settled by Hon'ble Supreme Court in civil appeal no. 3864-3889/2020.

- 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 for the projects where due date of possession is before 01.07.2017 the promoter shall not charge GST from the complainant. As the due date of possession is 18.10.2015 therefore the respondent shall not charge GST from the complainant and shall refund the amount if already charged.

31. Complaint stands disposed of.

32. 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.