

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

Complaint no.:	1761 of 2021
First date of hearing:	01.07.2021
Date of decision:	24.09.2021

1. Mrs. Brij Bala sood
2. Mr. Arjun Sood,
R/o C2D/47-C, Janak Puri, New Delhi- 110058.

Complainants

Versus

M/s Ansal Housing 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 06.04.2021 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.	I-1304
8.	Unit measuring	1360.00 sq. ft.
9.	Date of execution of flat buyer agreement	28.06.2013
10.	Payment plan	Construction link
11.	Total consideration	₹ 61,48,373/- (As per customer ledger dated 20.01.2018 at pg. 42 of complaint)
12.	Total amount paid by the complainants	₹ 60,36,370/- (As per customer ledger dated 20.01.2018 at pg. 45 of complaint)

13.	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 30 of complaint]	28.12.2016 (42 months from date of execution of builder buyer agreement i.e., 28.06.2013) (Note: Grace period allowed)
14.	Delay in handing over possession till the date of this order i.e., 24.09.2021	4 years 8 month 27 days
15.	Status of the project	Ongoing
16.	Occupation certificate	Not obtained
17.	Offer of fit out possession	01.12.2020

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 housing project and the complainants had needed an own home for her family.
- b. That the complainants were subjected to unethical trade practice as well as subject of harassment, flat buyer agreement clause of escalation cost, many hidden charges which will 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

builder buyer agreement between respondent and complainants mentioned in developer's representations, DTCP given the licence 48 of 2011 to Resolved Estate Pvt. Limited (confirming party -1) this company was transferred his rights to Optus Corona Developers Pvt. Ltd. (confirming party-2) this company was transferred his rights to Samyak Projects Pvt. Ltd (confirming party-3). At last confirming party -3 makes another arrangement to joint with respondents those all arrangements create doubt, suspicion, M/s Ansal Housing Ltd. have legal right to collect money from allottees against the unit no.-I-1304, Tower I, "Ansal Heights 86", Sector 86, Gurugram, Haryana and have legal & valid license to develop this project.

- c. That based on promises and commitment made by the respondent, complainants booked a 2 BHK flat admeasuring 1360 sq. ft., along with one covered car parking in the unit no. I-1304, 13th Floor, Tower-I in residential project "Ansal Heights 86", Sector 86, Gurugram, Haryana and paid the booking amount of Rs. 4,00,000/- through cheque no. 061599, dated 29.04.2012.
- d. That the complainants were allotted the flat no. I-1304, 13th Floor, Tower-I in residential project "Ansal Heights 86", Sector 86, Gurugram, Haryana in 2012. That the respondent to dupe the complainants in their nefarious net even executed flat buyer agreement signed between M/S Ansal Housing & Construction Ltd. and Mrs. Brij Bala Sood & Mr Arjun Sood, dated 28.06.2013. 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 due to which they were able to extract huge amount of money from the complainants.
- e. That the total cost of the said flat is Rs. 61,48,373/- and a sum of Rs. 60,36,370.48/- paid by the complainants in time bound manner. That it is pertinent mentioned here that according to the statement the complainants paid a sum of Rs. 60,36,370.48/- to the respondent till date and before this builder was demanded more than 95% amount without doing appropriate work on the said project, which is illegal and arbitrary.
- f. 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.
- g. That complainants have paid all the instalments timely and deposited Rs. 60,36,370.48/- 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 an 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 60 % 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.
- h. That respondent was liable to hand over the possession of a said unit before 28.12.2016 so far from completion as per buyer's agreement clause no 31 "*the developer shall offer possession of unit anytime, within period of 42 months from the date of execution of agreement or within 42 months from the date of obtaining all 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 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*".
- i. That respondent was liable to hand over the possession of a said unit before 28.12.2016 so far from completion as per buyer's agreement clause no 31 but builder offer the possession on dated 01.12.2020 without getting occupancy certificate and also flat are not in habitable condition. Complainants wrote the email to respondent and raised the concern regarding "offer of possession for fit outs" letter.
- j. That the builder in last 8 years, many time made false promises for possession of flat and current status of project still desolated and raw even not 60 % completed builder breach the trust and agreement. 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.
- k. That respondent executed FBA is one sided at the time offer of possession for fit outs builder used new trick for extracted extra money from complainants, forcibly imposed escalation cost of Rs.1,54,501.19/-, many others charge and wrongly justified it. It is understood when respondent booked the flat in 2012 and which was to be delivered by 2016 (as per agreement it was to be delivered after 42 months from date of agreement) and therefore it is understood inflation was calculated at the time of booking. If project is delayed by the respondent, complainants are not responsible. When we see inflation index of past 18 year during this period rate of inflation is decreased so builder is liable to give discount in basic sale price rather than forcibly impose escalation cost with unjustified reason. Basic sale price which was fixed at the time of booking so demand of escalation cost is totally illegal, arbitrary, unjustified, and unacceptable.
- l. That as the delivery of the apartment was due on 26.12.2016 which was prior to the coming into of force of the GST Act, 2016 i.e., 01.07.2017, it is submitted that the complainants are not liable to incur additional financial burden of GST due to the delay caused by the respondent. Therefore, the respondent should pay the GST on behalf of the complainants but just reversed builder collect the GST from complainants and enjoy the input credit as a bonus, this is also matter of investigation.
- m. That the respondent has indulged in all kinds of tricks and blatant illegality in booking and drafting of FBA with a malicious and

fraudulent intention and caused deliberate and intentional huge mental and physical harassment of the complainants. That the complainants communicate with respondent and asked for delayed possession respondent show problem of financial crunch other side builder extracted huge amount from complaints and given loan to others, and project development abundant create suspicion on builder intention. Complainants register EOW police complaint in Kherki Daula Police Station Gurugram, complaint no. 801012102514 on dated 12.01.2021 against Respondent.

- n. That respondent charges IFMS (Interest free maintenance security), this is security deposit and builder will get interest on amount but not passed the complainant is illegal, arbitrary and unilateral. 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 unit in near future seems bleak and that the same is evident of the irresponsible and desultory attitude and conduct of the respondent, consequently injuring the interest of the buyers including the complainants who have spent their entire hard earned savings 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 loss.
- o. 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 86 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.60,36,370.48/- of 24% till the handing over the physical possession. As per flat buyer agreement builder liable to offer possession on before 28th December 2016.
- b. Direct the respondent to quash the escalation cost of Rs.1,54,501.19/-
- c. Direct the respondent to pay interest on maintenance security.
- d. Direct the respondent to complete the project immediately and hand over the possession of the flat after getting occupancy certificate.
- e. Pass the order for forensic audit of builder because builder extracts more than 95% but project still incomplete more than 40 %.
- f. Direct the respondent to quash the one-sided clauses from agreement.
- g. Pass an order for payment of GST amount levied upon the complainants and taken the benefit of input credit by builder.
- h. 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 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. 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 agreement dated 26.06.2013, as shall be evident from the submission made in the following paragraphs of the present reply.
 - c. The complainants approached the respondent sometime in the year 2013, 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 the unit, un-influenced in any manner by the respondent.
- d. That, thereafter, complainants through an application form dated 03.08.2013 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. 1-12A04, type of unit-2 BHK, sales area 1360 sq. ft., (126.35 sq. mtrs.) in the project, namely, Ansals Heights, situated at sector-86, village Nawada Fatehpur, Gurugram. The complainants consciously and willfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that the complainants shall remit every instalment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainants. The complainants further undertake to be bound by the terms and conditions of the application form and the agreement as well.
- e. 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.
- f. That without prejudice to the aforesaid and the rights of the respondent, it is submitted that the respondent would have handed over the possession to the complainants within time had there been

no force majeure circumstances beyond the control of the respondent, there had been several circumstances which were absolutely beyond and out of control of the respondent such as orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble Punjab & Haryana High Court duly passed in civil writ petition no.20032 of 2008 through which the shucking/extraction of water was banned which is the backbone of construction process, simultaneously orders at different dates 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 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 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.

- g. That, it is submitted that the complaint is not maintainable or tenable under the eyes of law, as the complainants have not approached the hon'ble adjudicating officer with clean hands and have not disclosed the true and material facts relates to this case of complaint. The complainants, thus, have approached the hon'ble adjudicating officer with unclean hands and have suppressed and concealed the material facts and proceedings which has direct bearing on the very maintainability of purported complaint and if there had been disclosure of these material facts and proceedings the question of entertaining the present complaint would have not arising in view of the case law titled as ***S.P. Chengalvaraya Naidu Vs. Jagan Nath reported in 1994 (1) SCC*** Page-1 in which the Hon'ble Apex Court of the land opined that non-disclosure of material facts and documents amounts to a fraud on not only the opposite party, but also upon the hon'ble adjudicating officer and subsequently the same view was taken by even Hon'ble National Commission in case titled as ***Tata Motors Vs. Baba Huzoor Maharaj bearing RP No.2562 of 2012*** decided on 25.09.2013.
- h. That without admitting or acknowledging the truth or legality of the allegations advanced by the complainants and without prejudice to the contentions of the respondent, it is respectfully submitted that the provisions of the act are not retrospective in nature. the provisions of the act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. it is further submitted that merely because the act applies to

ongoing projects which registered with the authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainants seeking interest cannot be called in to aid in derogation and ignorance of the provisions of the agreement. It is further submitted that the interest for the alleged delay demanded by the complainants is beyond the scope of the agreement the complainants cannot demand any interest or compensation beyond the terms and conditions incorporated in the 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 provision of section 3 of Act as it was opined that the said Act is having prospective effect instead of retrospective. para no.86 and 119 of the above said citation are very much relevant in this regard. It is further submitted that the interest for the alleged delay demanded by the complainants is beyond the scope of the agreement. The complainants cannot demand any interest or compensation beyond the terms and conditions incorporated in the agreement.

- i. 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 28.12.2016, and therefore, no cause of action is arisen in favor of the complainants on 28.12.2016, and thus, the

present complaint is barred by law of limitation and the hon'ble authority lacks jurisdiction.

- j. That, as far as labor cess, Fire Fighting Works and Haryana VAT and GST are concerned, the Central Government levied such taxes, which are still beyond the control of the respondent, it is specifically mentioned in clause 7 & 8 of the agreement, vide which complainants were agreed to pay in addition to basic sale price of the said unit he/she/they is/are liable to pay EDC, IDC together with all the applicable interest, incidental and other charges inclusive of all interest on the requisite bank guarantees for EDC, IDC or any other statutory demand etc. The complainants further agreed to pay his proportionate share in any future enhancement /additional demand raised by authorities for these charges even if such additional demand raise after sale deed has been executed.
- k. That, it would be relevant to mention here in case titled ***as Mr. Abhishek Mohan Gupta Vs. Mis Ireo Grace Realtech (Pvt.) Ltd., Complaint No.2044 of 2018***, date of first hearing 12.03.2019, decided on 12.03.2019 by the hon'ble adjudicating officer, in Para No.36, it was held by the hon'ble adjudicating officer 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...."

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 these 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 pay delay interest on paid amount of Rs.60,36,370.48/- of 24% till the handing over the physical possession. As per flat buyer agreement builder liable to offer possession on before 28th December 2016.

11. 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 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 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 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 is calculated from date of execution of ABA i.e., 28.06.2013. The period of 42 months expired on 28.12.2016. 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 taken into consideration by the authority and the grace period of 6 months is not 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(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

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

Explanation. —For the purpose of this clause—

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

17. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., **9.30%** by the

respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.

F.II. Direct the respondent to pay interest on maintenance security.

18. Almost for every purchase of units in a real estate project, the consideration amount for units includes:

- Basic sale price
- The amount paid towards parking space, electricity and other
- Infrastructure Development Charges (IDC),
- External Development Charges (EDC) and
- Interest Free Maintenance Security (IFMS) (which is security not consideration)

19. IFMS is a lump sum amount that the home buyer pays to the builder which is reserved/accumulated in a separate account until a residents' association is formed. Following that, the builder is expected to transfer the total amount to the association for maintenance expenditures. The system is useful in case of unprecedented breakdowns in facilities or for planned future developments like park extensions or tightening security. The same is a one-time deposit and is paid once (generally at the time of possession) to the builder by the buyers. The builder collects this amount to ensure availability of funds in case unit holder fails to pay maintenance charges or in case of any unprecedented expenses and keeps this amount in its custody till an association of owners is formed. IFMS needs to be transferred to association of owners (or RWA) once formed.

20. In the opinion of the authority, the promoter may be allowed to collect a reasonable amount from the allottees under the head "IFMS". However, the authority directs and passes an order that the promoter

must always keep the amount collected under this head in a separate bank account and shall maintain the account regularly in a very transparent manner. If any allottee of the project requires the promoter to give the details regarding the availability of IFMS amount and the interest accrued thereon, the promoter must provide details to the allottee. It is further clarified that out of this IFMS/IBMS, no amount can be spent by the promoter for the expenditure he is liable to incur to discharge his liability under section 14 of the Act.

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

21. In this context, attention of the authority was drawn to the fact that the legislature while framing the GST law specifically provided for anti-profiteering measures as a check and to maintain the balance in the inflation of cost on the product/services due to change in migration to a new tax regime i.e. GST, by incorporating section 171 in Central Goods and Services Tax Act, 2017/ 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.
25. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a)

of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 31 of the agreement executed between the parties on 28.06.2013, 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 28.12.2016. As far as grace period is concerned, the same is disallowed. Therefore, the due date of handing over possession is 28.12.2016. The respondent has offered fit out possession of the subject apartment on 01.12.2020 which is not a valid offer of possession. 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., 28.12.2016 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

26. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter 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., 28.12.2016 till the actual handing over of the possession.

- ii. The arrears of such interest accrued from 28.12.2016 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 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.
- vi. It is held that the promoter may be allowed to collect a reasonable amount from the allottee under the head "IFMS". However, the authority directs that the promoter must always keep the amount collected under this head in a separate bank account and shall maintain that account regularly in a very transparent manner. If any allottee of the project requires the promoter to give the details regarding the availability of IFMS amount and the interest accrued thereon, the promoter must provide details to the allottee. It is further clarified that out of this IFMS/IBMS, no amount can be spent by the promoter for the expenditure it is liable to incur to discharge its liability and obligations as per the provisions of section 14 of the Act.

vii. 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.

27. Complaint stands disposed of.

28. File be consigned to registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.09.2021


(Vijay Kumar Goyal)

Member

Judgement uploaded on 21.12.2021.