BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	**988 of 2021**
Date of filing complaint:		**18.02.2021**
First date of hearing	:	**31.03.2021**
Date of decision	:	**17.09.2021**

1. 2.	Lovnish Khanduja Pooja Khanduja **Both RR/O:** - 1004, Tower-1, Uniworld Garden, Sector 47, Sohna Road, Gurugram-122018	**Complainants**
	Versus	
1.	M/s Ireo Grace Realtech Private Limited Regd. Office at: - 304,Kanchan House, Karampura Commercial Complex, New Delhi -110015	**Respondent**

CORAM:	
Shri Samir Kumar	**Member**
Shri Vijay Kumar Goyal	**Member**
APPEARANCE:	
Sh. Rit Arora (Advocate)	Complainants
Sh. M.K Dang (Advocate)	Respondent

ORDER

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

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	"The Corridors", Sector-67A, Gurugram, Haryana
2.	Project area	37.5125 acres
3.	Nature of the project	Group Housing
4.	a) DTCP license no.	05 of 2013 dated 21.02.2013
	b) License valid up to	20.02.2021
	c) Name of the licensee	M/s Precision Realtors Pvt. Ltd. and 5 others
5.	RERA registered/not registered	**Registered** Registered in 3 phases vide **377 of 2017 dated 07.12.2017 (Phase 2)** vide 378 of 2017 dated 07.12.2017 (Phase 1) vide 379 of 2017 dated

		07.12.2017 (Phase 3)
	Validity status	30.06.2020 (for phase 1 and 2) 31.12.2023 (for phase 3)
6.	Date of approval of building plan	23.07.2013 (annexure- C4 on page no. 98 of the complaint)
7.	Unit no.	303, third floor, tower-A6 (annexure- C3 on page no. 41 of the complaint)
8.	Unit measuring	1726.91 sq. ft. (annexure- C3 on page no. 41 of the complaint)
9.	Date of allotment letter	07.08.2013 (annexure- C2 on page no. 29 of the complaint)
10.	Date of execution of buyer's agreement	21.10.2014 (annexure- C3 on page no. 38 of the complaint)
11.	Payment plan	Instalment payment plan (annexure- C3 on page no. 78 of the complaint)
12.	Possession clause	**13.3** The company proposes to offer the possession of the said apartment to the allottees **within a period of 42 months from the date of approval of the building plans and/or fulfilment of the preconditions imposed thereunder ("Commitment Period"). The allottees further agrees and understands that the company shall additionally be entitled to a period of 180 days ("Grace Period").**

		after the expiry of the said commitment period to allow for unforeseen delays beyond reasonable control of the company. **(emphasis supplied)**
13.	Due date of delivery of possession	23.01.2017 **Note: -** **Calculated from the date of approval of building plan.**
14.	Total consideration	Rs.1,73,08,261.56/- (annexure- C7 on page no. 114 of the complaint)
15.	Total amount paid by the complainants	Rs.1,69,91,253.44/- (annexure- C7 on page no. 114 of the complaint)
16.	Occupation Certificate	31.05.2019 31.05.2019 (A6 to A10, B1 to B4 and C3 to C7) [annexure- R21 on page no. 103 of the reply]
17.	Offer of Possession	12.06.2019 (annexure- C5 on page no. 107 of the complaint)
18.	Delay in handing over the possession till offer of possession i.e., 12.06.2019 plus 2 months i.e., 12.08.2019	2 years, 6 months and 20 days
19.	Grace period utilization	Grace period of 180 days is not allowed.

B. Facts of the complaint

The complainants have submitted as under: -

3. That the complainants are allottees of a residential apartment in the group residential housing project of the respondent namely "The Corridors" (herein after referred as the "project").

4. That Precisions Realtors Pvt. Ltd.; Blue Planet Infra Developers Pvt. Ltd.; Madeira Conbuild Pvt. Ltd.; M/s Global Estate (hereinafter referred to as the "land owners") were amongst themselves the absolute owner in possession of freehold land admeasuring approx. 37.5125 acres located at sector-67A in the revenue estate of villages–Dhumaspur and Maidwas, Tehsil and District Gurgaon. The land owners claimed themselves to be well and sufficiently entitled to develop, sell and deal with residential apartments to be constructed on the said land and it further claimed to have received the sanctions and licenses from the DTCP to develop the project land. IREO Grace Realtech Pvt. Ltd. (hereinafter referred to as "the respondent") is a private limited company having its registered office at the abovementioned address. That the respondent claims to be one of the most reputed builders in the New Delhi/ NCR region claiming to have successfully completed several other residential projects.

5. That in the year 2011-12, the respondent along with land owners launched a group residential project with the name and style of "The Corridors" in the said piece of land. The land owners vested the respondent with the complete authority and appropriate powers inter alia to undertake on

its behalf marketing, sale and administration of all the constructed units comprising in the aforesaid project. The project was promoted with a catchy tagline which says – "MORE FUN. MORE EASE. MORE LIFE". It was claimed to be one of the largest condominiums in Gurgaon with over 10 acres of interlinked contiguous landscaped greens. Some of the main amenities which the accused company highlighted during the promotion of the project are:

- One of the largest club houses (2-storeyed club house spreads over 2 acres) ever in any residential community in Gurgaon.
- Features a virtually full-fledged mini sports city.
- Separate provision for community amenities including a full-fledged high school, an advanced hospital, community retail and a meditation centre.
- Play areas including cricket net, tennis court, football field, basketball and badminton, billiards, pool and cards room
- Ultra-modern toilets, swimming pools, fully equipped gymnasium, banquet hall, longue bar, squash court, library, spa and video game room
- Community facilities such as hospital, retail, school, creche, meditation centre and post office
- Eco friendly projects, landscaped gardens, club house, etc.

6. That in the year 2013, the complainants were looking for a residential apartment for themselves in Gurugram. During this time, the representatives of the respondent approached them and informed about the project and boast about the project and made various false and incorrect representations about the construction and delivery of possession. The

representatives assured that the plan have been approved by the DTCP, Haryana and the respondent has obtained all the other requisite sanctions and approvals from all competent authorities for starting constructions at the project site and the construction at the project site shall start soon and the possession will be delivered in next 3-4 years. The complainants were impressed by the highlights of the project and representations made by the agents of the respondent and decided to book an apartment in the subject project.

7. That the complainants made an application dated 25.03.2013 for booking an apartment in the project and paid a necessary booking amount. Pursuant to the receipt of the booking application, the respondent continued to demand payment as per the plan and the complainants kept making payment as and when demanded. After a delay of 5 months, the respondent issued an allotment letter dated 07.08.2013. Vide the allotment letter, an apartment no. CD-A6-03-303 on 3rd floor, tower-A6 and having a super area of 1726.91 sq. ft. was allotted to the original allottee. The complainants had made a substantial amount payment prior to issuance of the allotment letter.

8. That vide the said allotment letter, the complainants were also informed that the apartment buyer's agreement with regard to the allotted unit will be sent to them for execution separately and the complainants should send the signed agreements back to the opposite party within 30 days. It is

pertinent to mention that the terms of the said allotment letter were unilateral, unfair and illegal. As per the terms of the allotment letter, the OPs had the right to reject execution of any agreement in which the complainants/buyers have made any changes and also had the right to cancel the allotment and forfeit the booking amount if they failed to return the signed agreement within 30 days. Also, the OPs had the right to reject execution of any agreement without any cause or explanation. Clause 3 and 4 of the allotment letter are relevant in this regard.

9. That on 21.10.2014 i.e. after 1 year 2 months from allotment letter, an apartment buyer's agreement was executed between the respondent and the complainants. The agreement was executed by the respondent as the first party; complainants as the second party and the land owners as confirming parties/ third party. With the execution of the said agreement, the following details of the previously allotted apartment were reconfirmed i.e., apartment no. CD-A6-03-303 on 3rd floor, tower-A6 and having a super area of 1726.91 sq. ft. for a total consideration of Rs. 1,73,08,261.56/-.

10. That as per clause 13.3 of the apartment buyer's agreement, the delivery of the flat would be done within 42 months from the date of approval of the building sanction plan. The building plans for the project were approved on 23.07.2013 by the DTCP, Haryana. Therefore, the possession of the unit

was supposed to be delivered by 23.01.2017 i.e. 42 months from the date of approval of the building plan i.e. 23.07.2013. However, the respondent illegally changed the interpretation of the possession and informed the complainants that the possession will become due from the date of grant of fire NOC and not from the building plan approval. And since the fire NOC was granted on 27.11.2014 so the possession will fall due on 27.05.2018 i.e. 42 months from date of receipt of approval. Thus, by illegally changing the interpretation of the possession clause, the respondent extended the possession duration by 1 year 10 months.

11. That the respondent failed to offer possession of the unit within the schedule date as per the agreement. After a delay of more than 1 year 1 month, the respondent sent an offer of possession dated 12.06.2019 to the complainants. With the said offer of possession, the respondent demanded a total sum of Rs. 27,83,721/- from the complainants. The complainants were also instructed to make the final outstanding payment by 12.07.2019 and in case of delay the complainants were liable to pay a holding charges of Rs. 7.5/ per sq. ft. per month of the super area besides delayed payment interest.

12. That it is pertinent to mention here that there was a long inordinate, unexplained and unjustified delay of more than 1 years 1 months in offer of possession and the respondent ought to have compensated the complainants fairly and

adequately for such long delay. However, in the offer of possession, the respondent offered a rebate of paltry amount of Rs. 85,590/- for the delay. It is submitted that the delay compensation of Rs. 85,590/- is inadequate, unfair and unjustified in view of long inordinate and unexplained delay and in a situation where the complainants had already paid around Rs. 1.70 crores. After receiving the offer of possession, the complainants contacted the respondent and requested them to compensate him as per the provisions of the Real Estate (Regulation and Development) Act, 2016 i.e. pay interest at the same rate at which they charged the complainants on the delayed payment or at least as per the prescribed rate of interest but the respondent refused.

13. That after receiving the offer of possession, the complainants visited the project site to see if the unit is actually ready and habitable. The complainants found that the apartment is not complete and not in habitable condition. No internal work was done only superstructure was ready and the complete final finishing work such as plasters, flooring, kitchen was yet to be done to make the apartment ready and habitable. Also, due to construction at the project site, the premises were full of dust and dumps. Looking at the condition of the apartment, it was clear that the respondent sent the offer of possession in haste just to escape the liability of further delay compensation and other liability as per the and extract money from the complainants. The complainants contacted

the respondent about the same however the respondent asked the complainants to pay the final dues first for completing the final finishing work and making it habitable. It is therefore, prayed before this authority that the immediate possession of the unit be delivered to the complainants.

14. That it was informed to the complainants, if the possession is not taken by them by 12.07.2019, then holding charges will be levied on them @Rs. 7.5 per sq. ft. per month of super besides the delayed payment interest @20% per annum. However, the complainants made it clear to the respondent that the possession cannot be not taken because the unit is not ready and habitable and until it is made complete and habitable and the delay compensation is inadequate and not as per the provisions of Real Estate (Regulation and Development) Act, 2016 and therefore, the respondent are not entitled to levy holding charges and delay payment interest on them. It is prayed before the authority that the holding charges and delayed payment interest are not levied for the delay in possession because of respondent's fault.

15. That on 01.02.2021, the respondent sent an email demanding a sum of Rs. 31,48,872/- for taking physical possession of the apartment. That the demand of Rs. 31,48,872/- includes:

- Club charges - Rs. 1,47,500/-
- RWA charges - Rs. 2,59,037/-
- Interest on instalment with GST - Rs. 3,32,147/-
- Interest on RWA - Rs. 80,479/-

- Interest on Club with GST - Rs. 54,075/-
- Holding Charges with GST - Rs. 2,88,852/-

16. That these charges are illegal and cannot be levied on the complainants because the complainants were also willing and ready to pay the final dues and take over physical possession after completing due procedure. But the complainants were unable to take the physical possession of the apartment because the apartment was not ready and complete as per the specification of the agreement and was not in habitable condition. Therefore, the respondent cannot take benefit of their wrong and impose interest on outstanding instalment and levy holding charges for delay which occurred because of their own fault. Further, since no physical possession is taken yet, the respondent is not entitled to charge RWA and club charges and interest on them. That recently on 12.02.2021, the respondent sent another demand letter whereby they demanded Rs. 23,93,318/-, which was demanded with offer of possession letter dated 12.06.2019. That the respondent is following unfair trade practices by sending conflicting demand letters. That the respondent should cancel both the demands dated 01.02.2021 and 12.20.2021 sent to the complainants in view of conflicting demands. Even though the respondent has not added interest component in the demand letter dated 12.02.2021 which were a part of the letter dated 01.02.2021, the complainants are apprehensive that the respondent shall

demand such interest at a later stage.

17. That apart from all the other unfair and restrictive trade practices followed by the respondent, the respondent took advantage of their dominant position in the contract and the fact that the complainants had paid a considerable amount and drew an unfair and illegal contract with him, provisions of which were totally arbitrary, unilateral and one-sided. The respondent had drawn all the provisions in their favour especially those related to the possession, delay compensation. The complainants were denied fair scope of compensation in case of delay of possession and was burdened with heavy interest rates in case of delay in payment of instalments. That the arbitrariness and unfairness of the agreement can be found out from the clauses 7.4, 13.3 and 13.4 of the agreement among other clauses. As per clause 7.4 of the agreement, in case of delay in payment, the respondent was liable to charge interest @20% p.a. whereas as per clause 13.4, in case of delay in offering possession, the complainants were only entitled a paltry compensation @ Rs. 7.50/- per sq. ft. per month of super area. Under clause 13.3, the respondent illegally extended the possession date by more than 1 year 10 months. However, due to payment of huge amount prior to execution of agreement and forfeiture of the entire payment made till that date in case of cancellation of allotment, the original allottee had no other option but to sign on the dotted line. That such

unilateral, one-sided and arbitrary agreements have already been held to be illegal and unfair and inapplicable while deciding the matter of compensation for the allottees in cases of delay in offer of possession and unfair trade practices followed by the respondent/developer, by several Courts. The Hon'ble Supreme Court has already held such one-sided agreements to be unfair and invalid in the case of ***Pioneer Urban Land and Infrastructure Limited versus Govindan Raghavan.***

18. That it is settled law that the allotter /homebuyers are not supposed to wait endlessly for possession of their units. The developers are obligated to complete the project within reasonable time but the respondent failed to do so. The Hon'ble Supreme Court in ***Fortune Infrastructure and Ors versus Trevor D'Lima and Ors*** had held that a time period of 3 years is reasonable time to complete a contract related to housing construction. Similar view was taken by the Hon'ble Supreme Court in ***Kolkata West International City Pvt. Ltd. versus Devasis Rudra.*** In the present case, the respondent not only failed to complete the construction within reasonable time period but also followed unfair and illegal trade practices to extend the duration of the contract.

19. That the unfair and restrictive practices followed by the respondent highlighted bellow:

    I. The unit was booked by the complainants in March 2013 however, the respondent first deliberately delayed the issuance of allotment letter for 5 months.

The delay was deliberate and intentional because when the respondent had accepted the booking and payment in March 2013, they did not have the necessary approvals/sanctions from the authorities for the project. The building plan was approved only in July 2013. That soon after receipt of approval on building plans, the respondent started issuing allotment letter in August 2013. Thus, the acceptance of booking prior to approval and inviting booking by misrepresenting that they have all the approval is illegal and unfair trade practices.

II. The allotment letter was issued in August 2013 however the execution of the agreement was deliberately delayed by more than 1 year and the agreement was executed only in October 2014.

III. At the time of booking it was informed that the possession will be offered in 3-3.5 years. However, later the respondent formulated the possession in such a way that the possession time was extended by another 1.5 years and the total possession duration was extended from 36 months of booking to 60 months which is against the settled law.

IV. The respondent charged holding charges for delay in taking physical possession of the apartment; interest on the delayed interest on instalment for their own fault. The delay occurred due to respondent and not because of complainants.

V. That without the complainants taking over physical possession, the respondent charged RWA and club charges and interest charges on RWA and club.

20. That till date the complainants have paid a total sum of Rs 1,69,91,253.44/- out of the total sale consideration of Rs 1,89,39,894.73/-. That since booking till date, the respondent

never informed the complainants about any force majeure or any other circumstances which is beyond their reasonable control, which has led to the delay in the completion of the project within the time prescribed in the agreement. That as per clause no. 13.3 of the agreement, the possession was due in January, 2017 (which was illegal increased to 27.05.2018). However, the respondent is not entitled to get the benefit of extension period of 6 months as per clause 13.3 which was for reasonable beyond the control of the respondent. The delay on the part of the respondent in obtaining the approvals cannot be considered as force majeure.

21. That the respondent has failed to abide by their promise and failed to deliver the possession of the unit within the promised time and the possession offered by the respondent was illegal and incomplete and was sent with intention of extracting money from complainants and then sent a demand letter levying charges which are illegal. Under such circumstances, the complainants are left with no other option but to file the present complaint seeking immediate peaceful possession with adequate delay compensation. In such circumstances, it is only fair that the respondent be directed to deliver the immediate peaceful possession of the unit complete in all aspects as per the specification in the agreement along with all the promised amenities and in a habitable condition to the satisfaction of complainants along with adequate delay compensation and other compensation

and cancel the demand letter.

22. That the section 18 of the Act of 2016 states that if the developer fails to complete the project and is unable to give possession to the buyer within the prescribed time and in such cases where the allottees wishes to continue with their allotment, then developer is liable to pay compensation for such delay in handing over the possession to the allottees. Further, the term interest has been defined in the Section 2(za) of the RERA Act. Section 2(za) states that if the promoter/builder fails to offer the possession within stipulated/promised time frame, they shall be liable to pay interest to the allottees at the same rate which they have charged interest from the allottees on the late payment of instalments or any other payment. Therefore, as per the principal of parity and provisions of the Act i.e. as per definition of Interest in Section 2(za), it will be justified if the complainants are compensated by the respondent for the delay in handing over the possession at the same rate at which they were charged interest on delayed payments/instalments i.e. 20% per annum as per the agreement.

23. That the complainants had filed a consumer complaint before the Hon'ble National Consumer Disputes Redressal Commission bearing case no. 1128 of 2019. However, prior to approaching this authority, the complainants have withdrawn the consumer complainants filed before Hon'ble

National Consumer Disputes Redressal Commission, New Delhi on 15.02.2021.

C. Relief sought by the complainants.

24. The complainants have sought following relief(s):

(i) Direct the respondent to pay compensation for delay in the form of interest @20% p.a. on the amount paid by the complainants from the promised date of delivery of 27.05.2018 till the date of filing the complaint.

(ii) Direct the respondent to deliver the immediate peaceful possession of the flat after completing it in all aspects with promised amenities and as per the specifications in terms of the buyer agreement and in habitable condition.

(iii) Direct the respondent to cancel the offer of possession letter dated 12.06.2019 being incomplete, invalid and illegal.

(iv) Direct the respondent to cancel the demand email dated 01.02.2021 and cancel/waive off the holding charges on account of default on the part of the respondent.

(v) Direct the respondent to cancel/waive off the delay payment interest on the outstanding amount to be paid for possession on account of default on the part of the respondent.

(vi) Direct the respondent to not levy any other charges which are not part of the agreement in final demand letter.

D. Reply by the respondent.

The respondent has contested the complainants on the following grounds: -

25. That the respondent is a reputed real estate company having immense goodwill, comprised of law abiding and peace-loving persons and has always believed in satisfaction of its customers. The respondent has developed and delivered several prestigious projects such as 'Grand Arch', 'Victory Valley', 'Skyon' and 'Uptown' and in most of these projects large number of families have already shifted after having taken possession and Resident Welfare Associations have been formed which are taking care of the day to day needs of the allottees of the respective projects. That the complainants, after checking the veracity of the subject project had applied for allotment of an apartment vide its booking application form.

26. That based on the said application, the respondent vide its allotment offer letter dated 07.08.2013 allotted to the complainants, apartment no. CD-A6-03-303 having tentative super area of 1726.91 sq. ft. for a sale consideration of Rs 1,73,08,261.56/-. It is submitted that the respondent had sent the copies of the apartment buyer's agreement to the complainants on 19.12.2013 and 14.03.2014.

27. That the respondent raised payment demands from the complainants in accordance with the agreed terms and conditions

of the allotment as well as of the payment plan and the complainants made some payments in time and then started delaying and committing defaults. It is pertinent to mention herein that the respondent had raised the third instalment demand on 18.03.2014 for the net payable amount of Rs.19,97,603.77. However, they paid the demanded amount only after reminders dated 13.4.2014 and 04.05.2014 were issued by the respondent.

28. That the complainants failed to sign the apartment buyer's agreement despite reminders dated 28.05.2014, 17.07.2014 and final notice dated 29.08.2014. It is pertinent to mention here that despite several reminders by the respondent the complainants never executed the apartment buyer's agreement and thus the respondent was constrained to cancel the allotment of the complainants vide its cancellation letter dated 07.10.2014.

29. That vide request letter dated 13.10.2014, the complainants requested the respondent to restore their allotment and also undertook to abide by the terms and conditions of the allotment including timely payment of the instalments. The respondent being a customer-oriented company and after the fulfilment of all the formalities, to this effect by the complainants, acceded to the request of the complainants vide letter dated 16.10.2014. Accordingly, the complainants had then signed an apartment buyer's agreement with the respondent on 21.10.2014.

30. That vide payment request letter dated 21.12.2015, the respondent sent the seventh instalment demand for the net

payable amount of Rs. 9,90,080.34. However, the complainants remitted the due amount only after reminder dated 18.01.2016 was sent by the respondent.

31. That the possession of the unit was supposed to be offered to the complainants in accordance with the agreed terms and conditions of the booking application form. It is submitted that clause 43 of the schedule – I of the booking application form and clause 13.3 of the apartment buyer's agreement states that *"subject to force majeure as defined herein and further subject to the applicant having complied with all its obligations under the terms and conditions of this Agreement and the Applicant not having defaulted under any provision(s) of this Agreement including but not limited to the timely payment of the total sale Consideration, stamp duty and other charges and also subject to the applicant having complied with all formalities or documentation as prescribed by the Company, the Company proposes to offer the possession of the said apartment to the allottee within a period of 42 months from the date of approval of the Building Plans and/or fulfilment of the preconditions imposed thereunder (Commitment Period). The allottee further agrees and understands that the company shall be additionally be entitled to a period of 180 days (Grace Period)..."*. Furthermore, delay period of 12 months from the date of expiry of the grace period as per clause 44 of schedule 1 of the booking application form and clause 13.5 of the apartment buyer's agreement is also provided.

32. That from the aforesaid terms of the apartment buyer's agreement, it is evident that the time of delivery of possession was to be computed from the date of receipt of all requisite approvals. Even otherwise construction can't be raised in the absence of the necessary approvals. It is pertinent to mention here that it has been specified in sub- clause (iv) of clause 17 of the approval of building plan dated 23.07.2013 of the said project that the clearance issued by the Ministry of Environment and Forest, Government of India has to be obtained before starting the construction of the project. It is submitted that the environment clearance for construction of the said project was granted on 12.12.2013. Furthermore, in clause 39 of part-A of the environment clearance dated 12.12.2013 it was stated that fire safety plan was to be duly approved by the fire department before the start of any construction work at site.

33. That the last of the statutory approvals which forms a part of the pre-conditions was the fire scheme approval which was obtained on 27.11.2014 and that the time period for offering the possession, according to the agreed terms of the apartment buyer's agreement, had expired only on 27.11.2019. However, the force majeure conditions are to be taken into consideration for the purpose of computing the time period. Furthermore, the revised date of offering the possession as submitted before this authority at the time of registration of the project is 30.06.2020.

34. That the complainants are trying to mislead this authority by making baseless, false and frivolous averments. The respondent has already completed the construction of the tower in which the

unit allotted to the complainants is located and has even applied for the grant of the occupation certificate vide application dated 06.07.2017. It is submitted that the respondent has already received the occupation certificate dated 31.05.2019 from the competent authority. It is submitted that the respondent has prior to the elapse of the due date of possession already offered the possession vide notice of possession dated 12.06.2019. The complainants are bound to complete the documentation formalities and make payment towards the remaining due amount. In fact, holding charges are payable by the complainants. However, the complainants have till date not remitted the due amount despite reminders dated 12.02.2021 and 16.02.2021 by the respondent.

35. That although the respondent has offered the possession of the apartment prior to the elapse of the due date of handing over of the possession, it is pertinent to mention herein that the implementation of the said project was hampered due to non-payment of instalments by the allottees on time and also due to the events and conditions which were beyond the control of the respondent and which have materially affected the construction and progress of the project. Some of the force majeure events/conditions which were beyond the control of the respondent and affected the implementation of the project and are as under :

I. **Inability to undertake the construction for approx. 7-8 months due to Central Government's Notification with regard to Demonetization:** [Only

happened second time in 71 years of independence hence beyond control and could not be foreseen]. The respondent had awarded the construction of the project to one of the leading construction companies of India. The said contractor/ company could not implement the entire project for approx. 7-8 months w.e.f 9-10 November, 2016, the day when the Central Government issued notification with regard to demonetization. During this period, the contractor could not make payment to the labour in cash and as majority of casual labour force engaged in construction activities in India do not have bank accounts and are paid in cash on a daily basis. During demonetization the cash withdrawal limit for companies was capped at Rs. 24,000 per week initially whereas cash payments to labour on a site of the magnitude of the project in question are Rs. 3-4 lakhs per day and the work at site got almost halted for 7-8 months as bulk of the labour being unpaid went to their hometowns, which resulted into shortage of labour. Hence the implementation of the project in question got delayed due on account of issues faced by contractor due to the said notification of Central Government.

Further there are studies of Reserve Bank of India and independent studies undertaken by scholars of different institutes/universities and also newspaper reports of

Reuters of the relevant period of 2016-17 on the said issue of impact of demonetization on real estate industry and construction labour.

The Reserve Bank of India has published reports on impact of Demonetization. In the report- "Macroeconomic Impact of Demonetization", it has been observed and mentioned by Reserve Bank of India at page no. 10 and 42 of the said report that the construction industry was in negative during Q3 and Q4 of 2016-17 and started showing improvement only in April 2017.

Furthermore, there have been several studies on the said subject matter and all the studies record the conclusion that during the period of demonetization the migrant labour went to their native places due to shortage of cash payments and construction and real estate industry suffered a lot and the pace of construction came to halt/ or became very slow due to non-availability of labour. Some newspaper/print media reports by Reuters etc. also reported the negative impact of demonetization on real estate and construction sector. That in view of the above studies and reports, the said event of demonetization was beyond the control of the respondent, hence the time period for offer of possession should deemed to be extended for 6 months on account of the above.

II. **Orders Passed by National Green Tribunal:** In last four successive years i.e. 2015-2016-2017-2018, Hon'ble National Green Tribunal has been passing

orders to protect the environment of the country and especially the NCR region. The Hon'ble NGT had passed orders governing the entry and exit of vehicles in NCR region. Also the Hon'ble NGT has passed orders with regard to phasing out the 10 year old diesel vehicles from NCR. The pollution levels of NCR region have been quite high for couple of years at the time of change in weather in November every year. The Contractor of Respondent could not undertake construction for 3-4 months in compliance of the orders of Hon'ble National Green Tribunal. Due to following, there was a delay of 3-4 months as labour went back to their hometowns, which resulted in shortage of labour in April -May 2015, November- December 2016 and November-December 2017. The district administration issued the requisite directions in this regard.

In view of the above, construction work remained very badly affected for 6-12 months due to the above stated major events and conditions which were beyond the control of the respondent and the said period is also required to be added for calculating the delivery date of possession. Copy of the Order dated 7.04.2015 passed by NGT is annexed as **Annexure R-17.** Copies of Studies of Reserve Bank of India and other studies and news reports are **Annexure R18 (Colly).** Copy of press release of Environment Pollution (Prevention and Control)

Authority (EPCA) for stopping of construction activity in 2018 is **Annexure R19.**

III. **Non-Payment of Instalments by Allottees**: Several other allottees were in default of the agreed payment plan, and the payment of construction linked instalments was delayed or not made resulting in badly impacting and delaying the implementation of the entire project.

IV. **Inclement Weather Conditions viz. Gurugram:** Due to heavy rainfall in Gurugram in the year 2016 and unfavorable weather conditions, all the construction activities were badly affected as the whole town was waterlogged and gridlocked as a result of which the implementation of the project in question was delayed for many weeks. Even various institutions were ordered to be shut down/closed for many days during that year due to adverse/severe weather conditions.

36. That section 51 of the Indian Contract Act, 1872 provides that promisor is not bound to perform, unless reciprocal promisee is ready and willing to perform. Section 52 of the Indian Contract Act, 1872 provides for order of performance of reciprocal promises wherein it is stated that the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order.

In the instant case, the complainants failed to perform his obligation under the contract for timely payment of instalments. However, the respondent still fulfilled its obligations. No claim is maintainable by the complainants against the respondent.

37. That it is submitted that the complainants are real estate investors who had booked the unit in question with a view to earn quick profit in a short period. However, it appears that their calculations have gone wrong on account of severe slump in the real estate market and the complainants do not have sufficient funds to honour their commitments and now wants to harass and pressurize the respondent to submit to its unreasonable demands on highly flimsy and baseless grounds. Such malaise tactics of the complainants cannot be allowed to succeed.

E. Jurisdiction of the authority

38. The respondent has raised an objection regarding jurisdiction of authority to entertain the present complaint. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

> ***Section 11(4)(a)***
>
> *Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*
>
> *The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.*
>
> ***Section 34-Functions of the Authority:***
>
> *34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter 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 objections raised by the respondent.

F.I Objection regarding jurisdiction of the complaint w.r.t the apartment buyer's agreement executed prior to coming into force of the Act.

39. The respondent submitted that the complaint is neither maintainable nor tenable and is liable to be outrightly dismissed as the apartment buyer's agreement was executed between the complainants and the respondent prior to the enactment of the Act and the provision of the said Act cannot be applied retrospectively.

40. The authority is of the view that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. The Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act

and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)*** which provides as under:

> *"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter...*
>
> *122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."*

41. Also, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

> *"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even*

prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

42. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottees to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules and regulations made thereunder and are not unreasonable or exorbitant in nature. Hence, in the light of above-mentioned reasons, the contention of the respondent w.r.t. jurisdiction stands rejected.

F.II Objection regarding complainants are in breach of agreement for non-invocation of arbitration

43. The respondent submitted that the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute and the same is reproduced below for the ready reference:

> ***"35. Dispute Resolution by Arbitration***
> *"All or any disputes arising out or touching upon in relation to the terms of this Agreement or its termination including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussions failing which the same shall be settled through reference to a sole Arbitrator to be appointed by a resolution of the Board of Directors of the Company, whose decision shall be final and binding upon the parties. The allottee hereby confirms that it shall have no objection to the appointment of such sole Arbitrator even if the person so appointed, is an employee or Advocate of the Company or is otherwise connected to the Company and the Allottee hereby accepts and agrees that this alone shall not constitute a ground for challenge to the independence or impartiality of the said sole Arbitrator to conduct the arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/ modifications thereto and shall be held at the Company's offices or at a location designated by the said sole Arbitrator in Gurgaon. The language of the arbitration proceedings and the Award shall be in English. The company and the allottee will share the fees of the Arbitrator in equal proportion".*

44. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil

courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in ***National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506***, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

45. Further, in ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017***, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and builders could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

> *"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development)*

Act, 2016 (for short "the Real Estate Act"). Section 79 of the said Act reads as follows:-

> *"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."*

It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellant Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra), the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act.

...

56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated kind of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section 8 of the Arbitration Act."

46. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the builder buyer agreement, the Hon'ble Supreme Court **in case titled as M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018** has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution

of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view. The relevant para of the judgement passed by the Supreme Court is reproduced below:

> *"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."*

47. Therefore, in view of the above judgements and considering the provisions of the Act, the authority is of the view that complainants are well within their rights to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily. In the light of the above-

mentioned reasons, the authority is of the view that the objection of the respondent stands rejected.

G. Findings regarding relief sought by the complainants.

G.I Delay possession charges: To direct the respondent to pay the compensation for the delay in the form of interest @20% p.a. on the amount paid by the complainants from the promised date of delivery i.e., 27.05.2018 till the date of filing the complaint.

48. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges at prescribed rate of interest on amount already paid by them as provided under the proviso to section 18(1) of the Act which reads as under:-

> *"Section 18: - Return of amount and compensation*
>
> *18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*
>
> .....
>
> *Provided 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 the possession, at such rate as may be prescribed."*

49. Clause 13.3 of the apartment buyer's agreement (in short, the agreement) dated 21.10.2014, provides for handing over possession and the same is reproduced below:

> *"**13.3** Subject to Force Majeure, as defined herein and further subject to the Allottees having complied with all its obligations under the terms and conditions of this Agreement and not having defaulted under any provision(s) of this Agreement including but not limited to the timely*

*payment of all dues and charges including the total Sale Consideration, registration charges, stamp duty and other charges and also subject to the Allottees having complied with all formalities or documentation as prescribed by the Company, the company proposes to offer the possession of the said apartment to the allottees within a period of 42 months from the date of approval of the Building plans and/or fulfilment of the preconditions imposed thereunder ("**Commitment Period**"). The Allottees further agrees and understands that the company shall additionally be entitled to a period of 180 days ("**Grace Period**"), after the expiry of the said Commitment Period to allow for unforeseen delays beyond reasonable control of the company."*

50. The apartment buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builders/promoters and buyers/allottees are protected candidly. The apartment buyer's agreement lays down the terms that govern the sale of different kinds of properties like residentials, commercials etc. between the buyer and builder. It is in the interest of both the parties to have a well-drafted apartment buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the right of the buyers/allottees in case of delay in possession of the

unit. In pre-RERA period it was a general practice among the promoters/developers to invariably draft the terms of the apartment buyer's agreement in a manner that benefited only the promoters/developers. It had arbitrary, unilateral, and unclear clauses that either blatantly favoured the promoters/developers or gave them the benefit of doubt because of the total absence of clarity over the matter.

51. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainants not being in default under any provisions of this agreements and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by the allottees in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the apartment buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject

unit and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottees are left with no option but to sign on the dotted lines.

52. The respondent promoters have proposed to handover the possession of the subject apartment within a period of 42 months from the date of approval of building plans and/or fulfilment of the preconditions imposed thereunder plus 180 days grace period for unforeseen delays beyond the reasonable control of the company i.e., the respondent/promoter.

53. Further, in the present case, it is submitted by the respondent promoters that the due date of possession should be calculated from the date of fire scheme approval which was obtained on 27.11.2014, as it is the last of the statutory approvals which forms a part of the preconditions. The authority in the present case observed that, the respondent have not kept the reasonable balance between his own rights and the rights of the complainants/allottees. The respondent have acted in a pre-determined and preordained manner. The respondent have acted in a highly discriminatory and arbitrary manner. The unit in question was booked by the complainants on 25.03.2013 and the apartment buyer's

agreement was executed between the respondent and the complainants on 21.10.2014. The date of approval of building plan was 23.07.2013. It will lead to a logical conclusion that that the respondent would have certainly started the construction of the project. On a bare reading of the clause 13.3 of the agreement reproduced above, it becomes clear that the possession in the present case is linked to the "fulfilment of the preconditions" which is so vague and ambiguous in itself. Nowhere in the agreement it has been defined that fulfilment of which conditions forms a part of the pre-conditions, to which the due date of possession is subjected to in the said possession clause. If the said possession clause is read in entirety, the time period of handing over possession is only a tentative period for completion of the construction of the flat in question and the promoters are aiming to extend this time period indefinitely on one eventuality or the other. Moreover, the said clause is an inclusive clause wherein the "fulfilment of the preconditions" has been mentioned for the timely delivery of the subject apartment. It seems to be just a way to evade the liability towards the timely delivery of the subject apartment. According to the established principles of law and the principles of natural justice when a certain glaring illegality

or irregularity comes to the notice of the adjudicator, the adjudicator can take cognizance of the same and adjudicate upon it. The inclusion of such vague and ambiguous types of clauses in the agreement which are totally arbitrary, one sided and totally against the interests of the allottees must be ignored and discarded in their totality. In the light of the above-mentioned reasons, the authority is of the view that the date of sanction of building plans ought to be taken as the date for determining the due date of possession of the unit in question to the complainants.

54. Here, the authority is diverging from its earlier view i.e., earlier the authority was calculating/assessing the due date of possession from date approval of firefighting scheme (as it the last of the statutory approval which forms a part of the pre-conditions) i.e., 27.11.2014 and the same was also considered/observed by the Hon'ble Supreme Court in Civil Appeal no. 5785 of 2019 titled as '***IREO Grace Realtech Pvt. Ltd. v/s Abhishek Khanna and Ors.***' by observing as under: -

> *"With the respect to the same project, an apartment buyer filed a complaint under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (RERA Act) read with rule 28 of the Haryana Real Estate (Regulation & Development) rules, 2017 before the Haryana Real Estate Regulatory Authority, Gurugram (RERA). In this case, the authority vide order dated 12.03.2019 held that since the environment clearance*

for the project contained a pre-condition for obtaining fire safety plan duly approved by the fire department before the starting construction, the due date of possession would be required to be computed from the date of fire approval granted on 27.11.2014, which would come to 27.11.2018. Since the developer had failed to fulfil the obligation under Section 11(4)(a) of this Act, the developer was liable under proviso to Section 18 to pay interest at the prescribed rate of 10.75% per annum on the amount deposited by the complainant, upto the date when the possession was offered. However, keeping in view the status of the project, and the interest of other allottees, the authority was of the view that refund cannot be allowed at this stage. The developer was directed to handover the possession of the apartment by 30.06.2020 as per the registration certificate for the project."

55. On 23.07.2013, the building plans of the project were sanctioned by the Directorate of Town and Country Planning, Haryana. Clause 3 of the sanctioned plan stipulated that an NOC/ clearance from the fire authority shall be submitted within 90 days from the of issuance of the sanctioned building plans. Also, under section 15(2) and (3) of the Haryana Fire Service Act, 2009, it is the duty of the authority to grant a provisional NOC within a period of 60 days from the date submission of the application. The delay/failure of the authority to grant a provisional NOC cannot be attributed to the developers. But here the sanction building plans stipulated that the NOC for fire safety (provisional) was required to be obtained within a period of 90 days from the date of approval of the building plans, which expired on 23.10.2013. It is pertinent to mention here that the

developers applied for the provisional fire approval on 24.10.2013 (as contented by the respondent herein the matter of Civil Appeal no. 5785 of 2019 titled as '***IREO Grace Realtech Pvt. Ltd. v/s Abhishek Khanna and Ors***.) after the expiry of the mandatory 90 days period got over. The application filed was deficient and casual and did not provide the requisite. The respondent submitted the corrected sets of drawings as per the NBC-2005 fire scheme only on 13.10.2014 (as contented by the respondent herein the matter of Civil Appeal no. 5785 of 2019 titled as ***'IREO Grace Realtech Pvt. Ltd. v/s Abhishek Khanna and Ors.)***, which reflected the laxity of the developers in obtaining the fire NOC. The approval of the fire safety scheme took more than 16 months from the date of the building plan approval i.e., from 23.07.2013 to 27.11.2014. The builders failed to give any explanation for the inordinate delay in obtaining the fire NOC. So, the complainants/allottees should not bear the burden of mistakes/ laxity or the irresponsible behaviour of the developer/respondent and seeing the fact that the developer/respondent did not even apply for the fire NOC within the mentioned time. It is a well settled law that no one can take benefit out of his own wrong. In light of the above-mentioned facts the respondent/ promoter should not be allowed to take benefit out of his own mistake just because of a clause mentioned i.e., fulfilment of the preconditions even when they did not even apply for the same in the mentioned time frame.

56. **Admissibility of grace period:** The respondent promoters had proposed to hand over the possession of the apartment within 42 months from the date of sanction of building plan and/or fulfilment of the preconditions imposed thereunder which comes out to be 23.01.2017. The respondent promoters have sought further extension for a period of 180 days after the expiry of 42 months for unforeseen delays in respect of the said project. The respondent raised the contention that the construction of the project was delayed due to *force majeure* conditions including demonetization and the order dated 07.04.2015 passed by the Hon'ble NGT including others.

(i) **Demonetization:** It was observed that due date of possession as per the agreement was 23.01.2017 wherein the event of demonetization occurred in November 2016. By this time, major construction of the respondents' project must have been completed as per timeline mentioned in the agreement executed between the parties. Therefore, it is apparent that demonetization could not have hampered the construction activities of the respondents' project that could lead to the delay of more than 2 years. Thus, the contentions raised by the respondent in this regard are rejected.

(ii) **Order dated 07.04.2015 passed by the Hon'ble NGT:** The order dated 07.04.2015 relied upon by the respondent promoters states that

> *"In these circumstances we hereby direct state of U.P., Noida and Greater NOIDA Authority, HUDA, State of*

Haryana and NCT, Delhi to immediately direct stoppage of construction activities of all the buildings shown in the report as well as at other sites wherever, construction is being carried on in violation to the direction of NGT as well as the MoEF guideline of 2010."

A bare perusal of the above makes it apparent that the above-said order was for the construction activities which were in violation of the NGT direction and MoEF guideline of 2010, thereby, making it evident that if the construction of the respondents' project was stopped then it was due to the fault of the respondent themselves and they cannot be allowed to take advantage of their own wrongs/faults/deficiencies. Also, the allottees should not be allowed to suffer due to the fault of the respondent promoters. It may be stated that asking for extension of time in completing the construction is not a statutory right nor has it been provided in the rules. This is a concept which has been evolved by the promoters themselves and now it has become a very common practice to enter such a clause in the agreement executed between the promoter and the allotee. It needs to be emphasized that for availing further period for completing the construction the promoter must make out or establish some compelling circumstances which were in fact beyond his control while carrying out the construction due to which the completion of the construction of the project or tower or a block could not be completed within the stipulated time. Now, turning to the facts of the present case the respondent promoters has not assigned such compelling reasons as to why and how they

shall be entitled for further extension of time 180 days in delivering the possession of the unit. Accordingly, this grace period of 180 days cannot be allowed to the promoters at this stage.

57. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the rate of 20% p.a. however, proviso to section 18 provides that where an allottees does not intend to withdraw from the project, they 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.*

58. 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.

59. 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 17.09.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30% per annum.

60. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

> *"(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;"*

61. 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 delay possession charges.

62. Section 19(10) of the Act obligates the allottees to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. These 2 months' of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 23.01.2017 till offer of possession of the subject flat i.e., 12.06.2019 plus two months which comes out to be 12.08.2019 as per the provisions of section 19(10) of the Act.

63. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of apartment buyer's agreement executed between the parties on 21.10.2014, the

possession of the booked unit was to be delivered within 42 months from the date of approval of building plan (23.07.2013) which comes out to be 23.01.2017. The grace period of 180 days is not allowed in the present complaint for the reasons mentioned above. Accordingly, 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 complainants are entitled to delayed possession charges at the prescribed rate of interest i.e., 9.30% p.a. for every month of delay on the amount paid by the complainants to the respondent till offer of possession of the booked unit i.e., 12.06.2019 plus two months which comes out to be 12.08.2019 as per the provisions of section 18(1) of the Act read with rule 15 of the rules and section 19 (10) of the Act.

H. Directions of the authority:-

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

i. The respondent is directed to pay the interest at the prescribed rate i.e., 9.30 % per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 23.01.2017 till the offer of possession i.e., 12.06.2019 plus two months which comes out to be 12.08.2019 as per section 19 (10) of the Act.

ii. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order.

iii. The complainants/allottees are directed to take possession as offer of possession letter dated 12.06.2019 after obtaining the OC from the competent authority has already been issued by the respondent promoter.

iv. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same rate of interest which the 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. However, holding charges shall also not be charged by the promoter at any point of time even after being part of agreement as per law settled by the Hon'ble Supreme Court in civil appeal no. 3864-3889/2020 dated 14.12.2020.

65. Complaint stands disposed of.

66. File be consigned to the registry.

(Samir Kumar)
Member

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.09.2021