

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

Complaint no.:	2359 of 2021
First date of hearing:	19.08.2021
Date of decision:	30.03.2022

Ms. Urmila Rani
R/o 1198, Sector 16-17, Hisar

Complainant

Versus

M/s Ansal Housing Ltd.
Office address: 2ND FLOOR, Ansal Plaza, Sector 1, Near
Vaishali Metro Station, Ghaziabad-201010.

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairperson
Member**

APPEARANCE:

Mr. Mohit Dua (Advocate)
Ms. Meena Hooda (Advocate)

Complainant
Respondent

ORDER

1. The present complaint dated 17.06.2021 has been filed by the complainant/allottee 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 complainant, 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 up to 28.05.2017
5.	Name of licensee	Resolve Estate Pvt. Ltd.
6.	RERA registration details	Not registered
7.	Unit no.	I-1006 [annexure P/2, page 47 of complaint]
8.	Unit area admeasuring	1360 sq. ft. [super area]
9.	Date of builder buyer agreement	25.02.2013 [annexure P/2, page 44 of complaint]
10.	Payment plan	Construction link
11.	Total sale consideration	₹ 62,59,433/-



		[as per statement of account dated 10.12.2020 at page 62 of complaint]
12.	Amount paid by the complainant	₹ 54,73,519/- [as per statement of account dated 10.12.2020 at page 62 of complaint]
13.	Possession clause	31. <i>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."</i> (Emphasis supplied) [pg 41 of complaint]
14.	Due date of possession	25.02.2017 [Due date calculated from date of execution of buyer's agreement]
15.	Delay in handing over possession till the date	5 years 1 month 5 days

	of this order i.e., 30.03.2022	
16.	Status of the project	Ongoing
17.	Occupation certificate	Not obtained
18.	Offer of possession for fit outs	10.12.2020 [annexure P/3, page 61 of complaint]

B. Facts of the complaint

3. The complainant pleaded the complaint on the following facts:
- a. That somewhere around 2010-2011, the respondent advertised about its new group housing project namely "ANSAL HEIGHTS, 86" (*hereinafter called as the "project"*) located at Sector-86, District Gurugram. The respondent painted a rosy picture of the project in their advertisement making tall claims and representing that the project aims at providing world class amenities and said project is strategically located on main 60-meter sector road with easy access from both NH-8 & Dwarka Expressway. It was also represented that the project shall have facilities like convenient shopping, primary & nursery school, clubhouse with swimming pool/gymnasium/yoga/aerobics lounge, amongst several others.
 - b. That believing the false assurances and misleading representations in the advertisement pertaining to the project in question and relying on the strong market hold of the respondent company, on 10.12.2011, the complainant booked a residential apartment in the said project of the respondent by paying an amount of Rs. 4,00,000/- towards said booking.

- c. That thereafter, the respondent kept raising payment demands without executing the flat buyer agreement. Upon inquiring from the said respondent as to when the agreement will be executed, he simply said that it shall be executed soon and asked the complainant to pay the instalments as per demands raised. Believing the false assurances of the respondent company, the complainant kept making payment in accordance with the demands raised by the respondent, totalling to a payment of Rs. 11, 77,000/- from booking in December'2011 till February'2013, only in the hope that agreement shall be executed soon.
- d. That after more than two months from the date of booking, finally, on 25.02.2013, a flat buyer's agreement was executed between the parties for the 2 BHK unit bearing no. I-1006, admeasuring super area of 1360 sq. ft. for a total sale consideration of Rs. 54, 82,548/-.
- e. That as per clause 31 of the said agreement dated 25.02.2013, the respondent undertook to complete construction and offer possession within 42 months from the date of execution of said agreement or within 42 months from date of obtaining all the required sanctions and approvals necessary for commencement of construction, whichever is later along with a grace period of 6 months. Since the date of sanctions and approvals cannot be obtained, the due date is calculated from the date of execution of agreement. Thus, the due date of handing over possession comes out to be 25.02.2017.
- f. That at the time booking, the respondent assured that the project has all the necessary approvals and sanctions in order to commence construction and the same would be done soon and that the unit in

question shall be delivered within 4 years from booking. However, vide clause 31 of the agreement dated 25.02.2013, the respondent simply extended the date of possession by more than 2.5 months. Further, few extra charges were sought to be levied and the agreement also contained some unfair clauses. To this, the complainant took a serious note and pointed out the said anomalies to the respondent and sought an explanation to the same. However, the respondent simply assured that the agreement is a mere formality, and they will stick to the representations made at the time of booking and they shall deliver possession soon. Having invested a big amount out of her life savings in purchasing the unit in question, the complainant continued with the booking. However, the respondent miserably failed in handing over possession of the unit in question till said due date and even till now.

- g. That till date, the complainant has made a payment of Rs. 54,73,519.59/- as against total sale consideration of the unit in question. It is pertinent to mention here that the respondent took an amount of Rs. 47,600/- towards IDC and Rs. 4,21,600/- towards EDC. However, the project has still not been completed till date despite lapse of almost 9 years from the date of booking. The respondent also demanded and received an amount of Rs.75,000/- towards club fees though till date, no club is operational in the project in question. Moreover, the respondent also arbitrarily levied an amount of Rs. 24,480/- towards labour cess charges and upon objecting to the same, said respondent simply asserted that those charges are to be paid by the allottees to the government.

- h. That thereafter, no receiving offer of possession on the due date, i.e., 25.02.2017, somewhere around March'2017, the complainant again visited the project site but to her utter shock, there was snail paced construction going on at the project site and the project seemed nowhere nearing completion. Accordingly, the complainant immediately contacted the respondent in order to pursue them to complete the project, but to no avail.
- i. That, accordingly, the complainant herein is entitled to get interest on the paid amount at the rate as prescribed by the Haryana Real Estate (Regulation and Development) Rules, 2017 from due date of possession till the date of actual handing over of possession post receipt of occupation certificate.

C. Relief sought by the complainant:

4. The complainant has sought following reliefs:
 - a. Direct the respondent to obtain occupation certificate and offer valid possession of the unit in question.
 - b. Award delay interest at the prescribed rate for every month of delay from the due date of possession, i.e., 25.02.2017 till handing over of possession after receipt of occupation certificate.
 - c. Direct the respondent to refund the labour charges of Rs. 24,480/- unjustifiably levied from the complainant.
 - d. Direct the respondent to charge delay payments, if any, at the prescribed rate in accordance with the Haryana Real Estate (Regulation and Development) Rules, 2017.
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 filed 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 complainant has 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 complainant has 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 25.02.2013, as shall be evident from the submission made in the following paragraphs of the present reply.
 - c. The complainant approached the respondent sometime in the year 2011, for the purchase of an independent unit in its upcoming residential project "Ansals Heights" (hereinafter be referred to as "the project") situated in sector-86, village Nawada-Fatehpur, Gurugram. It is submitted that the complainant prior to approaching the respondent, had conducted extensive and

independent enquiries regarding the project and it was only after the complainant 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 complainant took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondent.

- d. The complainant, in pursuance of the aforesaid application form, were allotted an independent unit bearing no. I-1006, Type of unit- 2 BHK, sales area 1360 sq. ft., (126.35 sq. mtrs.) in tower I, in the project, namely, Ansals Heights, situated at sector-86, village Nawada Fatehpur, Gurugram. The complainant consciously and willfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that the complainant shall remit every instalment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainant. The complainant 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 complainant 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 labour 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 labours 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 complainant 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 complainant, 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 complainant 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 complainant 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 complainant is beyond the scope of the agreement the complainant 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 complainant is beyond the scope of the agreement. The complainant 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 complainant have alleged that due date of possession in respect of the said unit was 27.07.2016, and therefore, no cause of action is arisen in favor of the complainant on 27.07.2016, 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 complainant was 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 complainant 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 authority, in Para No.36, it was held by the hon'ble authority *the authority came across that as per clause 13.3 the respondent has agreed to offer the possession of the said apartment within a period of 42 months from the date of approval of building plans and/or fulfilment of preconditions imposed thereunder + 180 days grace period. The building plan for the project in question was approved on 23.07.2013 which contained a precondition under clause 17(iv) that respondent should obtain clearance from Ministry of Environment and Forest, Government of India before starting construction of project. The said environment*

clearance for the project in question was granted on 12.12.2013 containing a pre-condition of obtaining fire safety plan duly approved by fire department before starting construction. The respondent obtained the said approval on 27.11.2014. Therefore, the due date of possession comes out to be 27.11.2018 and the possession has been delayed by 3 months and 13 days till the date of decision....."

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 preliminary objections raised by the respondent regarding jurisdiction of the authority to entertain the present complaint stands rejected. 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. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Section 11

.....

(4) The promoter shall-

(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;

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.

11. 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 complainant at a later stage.

F. Findings on the relief sought by the complainant

F.I. Direct the respondent to obtain occupation certificate and offer valid possession of the unit in question.

12. **Validity of offer of possession:** The authority in complaint bearing no. **5137 of 2019 titled as Dr. Ashok Kumar Vaid and anr. Versus Emaar MGF Land Ltd.**, has comprehensively dealt with the components of valid offer of possession and they are as follows:

- a. Possession must be offered after obtaining OC/CC
- b. The subject plot should be in habitable condition

c. Possession should not be accompanied by unreasonable additional demands

13. In the present complaint, the respondent has offered the possession for fit outs of the subject plot vide letter dated 10.12.2020. It is evident from bare perusal of the documents placed on record by both the parties that the said offer was made without obtaining OC/part OC of the project where the subject unit is situated. In simple words, the said offer was made without obtaining the pre-requisites from the competent authority. Therefore, the said offer of possession for fit outs dated 10.12.2020 is not valid in the eyes of law and the same is held to be unlawful.

F.II. Award delay interest at the prescribed rate for every month of delay from the due date of possession, i.e., 25.02.2017 till handing over of possession after receipt of occupation certificate.

F.III. Direct the respondent to charge delay payments, if any, at the prescribed rate in accordance with the Haryana Real Estate (Regulation and Development) Rules, 2017

14. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges interest on the amount paid. 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.

"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."*

15. Clause 31 of the agreement to sell 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 date of execution of agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all the dues by buyer and subject to force-majeure circumstances as described in clause 32. Further, there shall be a grace 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"

16. 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 complainant 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 promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoters may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the flat buyer agreement by the promoters are just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused

his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

Admissibility of grace period: The promoter has proposed to hand over the possession of the apartment within a period of 42 months plus 6 months from date of agreement or the date of obtaining all the required sanctions and approval necessary for commencement of construction whichever is later. The authority calculated due date of possession according to clause 31 of the agreement dated 25.02.2013 i.e., within 42 months from date of execution as, there is no document on record regarding approval necessary for commencement of construction. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period of 6 months in the possession clause subject to force majeure circumstances. Accordingly, this grace period of 6 months shall be allowed to the promoter at this stage.

17. 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.”

18. 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.
19. 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., **30.03.2022** is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
20. 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;"*
21. 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.
22. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is

satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 11(a) of the agreement executed between the parties on 25.02.2013, the possession of the subject apartment was to be delivered within 42 months from the date of execution of the agreement. The period of 42 months expired on 25.08.2016. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 25.02.2017. The respondent has not yet offered the possession of the subject apartment. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 25.02.2017 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.

F.IV. Direct the respondent to refund the labour charges of Rs. 24,480/- unjustifiably levied from the complainant.

23. Labour cess is levied @ 1% on the cost of construction incurred by an employer as per the provisions of sections 3(1) and 3(3) of the Building and Other Construction Workers' Welfare Cess Act, 1996 read with Notification No. S.O 2899 dated 26.9.1996. It is levied and collected on the cost of construction incurred by employers including contractors under specific conditions. Moreover, this issue has already been dealt

with by the authority in complaint bearing no.962 of 2019 titled **Mr. Sumit Kumar Gupta and Anr. Vs Sepset Properties Private Limited** wherein it was held that since labour cess is to be paid by the respondent, as such no labour cess should be charged by the respondent. The authority is of the view that the allottee is neither an employer nor a contractor and labour cess is not a tax but a fee. Thus, the demand of labour cess raised upon the complainant is completely arbitrary and the complainant cannot be made liable to pay any labour cess to the respondent and it is the respondent builder who is solely responsible for the disbursement of said amount.

G. Directions of the authority

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

- i. The respondent is directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay from the due date of possession i.e., 25.02.2017 till the actual handing over of the possession.
- ii. The arrears of such interest accrued from 25.02.2017 till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10th of the subsequent month as per rule 16(2) of the rules.
- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.



- iv. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same rate of interest which the promoters shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- v. The respondents shall not charge anything from the complainant which is not the part of the agreement. However, holding charges shall not be charged by the promoters at any point of time even after being part of agreement as per law settled by Hon'ble Supreme Court in civil appeal no. 3864-3889/2020.
25. Complaint stands disposed of.
26. File be consigned to registry.

v.i - g
(Vijay Kumar Goyal)
Member

[Signature]
(Dr. K.K. Khandelwal)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 30.03.2022

HARERA
GURUGRAM