

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

Complaint no.:	2475 of 2021
First date of hearing:	19.08.2021
Date of decision:	30.03.2022

1. Mr. Kulbhushan
2. Ms. Rekha Singhal,
R/o House No. 1064, Sector 46, Gurugram

Complainants

Versus

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

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairperson
Member**

APPEARANCE:

Mr. Rajesh Kumar (Advocate)
Ms. Meena Hooda (Advocate)

Complainants
Respondent

ORDER

1. The present complaint dated 17.06.2021 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions as provided under the

provision of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

Sno.	Heads	Information
1.	Project name and location	"Ansal Heights, 86", Sector-86, Gurugram
2.	Project area	12.843 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	48 of 2011 dated 29.05.2011 valid up to 28.05.2017
5.	Name of licensee	Resolve Estate Pvt. Ltd.
6.	RERA registration details	Not registered
7.	Unit no.	C-0704 [page 28 of complaint]
8.	Unit measuring	1895 sq. ft. [super area]
9.	Date of execution of flat buyer agreement with original allottees	28.09.2012 [page 25 of complaint]
10.	Date of endorsement with subsequent allottee	Not mentioned in the endorsement sheet.



11.	Payment plan	Construction link
12.	Total consideration	₹ 71,62,816/- [As per builder buyer agreement dated 28.09.2012 at pg. 41 of complaint]
13.	Total amount paid by the complainants	₹ 68,56,479/- [as alleged by the complainants in CRA form at page 8 of complaint] No documentary proof placed in the file
14.	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 33 of complaint]



15.	Due date of delivery of possession	28.09.2016 [Due date calculated from date of execution of buyer's agreement] (Note: Grace period allowed)
16.	Delay in handing over possession till the date of this order i.e., 30.03.2022	5 years 6 months 2 days
17.	Status of the project	Ongoing
18.	Occupation certificate	Not obtained
19.	Offer of possession	Not Yet Offered

B. Facts of the complaint

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

- a. That the complainants entered into a flat buyer's agreement with the respondent to purchase an apartment/unit no. C-704, Sector 86, Gurugram, in pursuance to which the complainants have made all payments on time to the respondent. That flat buyer's agreement was executed on 28.09.2012. That a substantial part of the payment was raised by the complainants as loan from Axis Bank, Gurugram. That at the time of execution of flat buyer's agreement, the respondent had promised/confirmed (as per clause 31) that the possession of the unit shall be offered/given to the complainants within 42 months of the execution of agreement (with a grace period of 6 months). Thus, the possession of the unit/flat was to be offered/handed over to the complainants on or before 27.03.2016 or latest by 27.09.2016 (i.e., including grace period of 6months).



- b. That as per terms/Clause 37 of the flat buyer's agreement, if the developer fails to handover physical possession of the unit/flat to the buyer, a penalty @ Rs.5/- per sq.ft. per month was to be paid by the developer to the buyer. However, the respondent/developer had failed to deliver physical possession of the apartment/flat/unit to the complainants till 27.09.2016 (including grace period of 6 months) and thereafter, a period of more than 5 years had elapsed, but the project is still incomplete. Thus, there is an inordinate and unreasonable delay in handing over the physical possession and the respondent/developer failed to fulfil contractual obligations of the agreement dated **28.09.2012**. The respondent had violated the law of contract as well as the contractual obligations under Act and their rules and regulations.
- c. That the complainants have raised a substantial amount as loan from the Axis Bank. That the complainants are paying instalments of the house-building loan regularly, and on the other hand the complainants are also paying rental (house-rent) for the last five years [after due date of possession i.e., 27.09.2016 (including grace period of 6 months)]. That the respondent had collected 99% of the sale consideration as per the payment schedule annexed with the buyer's agreement, however still the respondent has failed to handover the possession of the apartment/unit to the complainant, thereby violating the very fundamental term of the buyer's agreement.
- d. That the respondent has failed to complete the project in time, resulting in harassment, extreme mental distress, pain and agony to the complainants. That the intention of the respondent was



- dishonest right from the beginning and that is why, it drafted unilateral terms and conditions of the buyer's agreement. The said terms and conditions are entirely unfair, unjust, unconscionable, oppressive and one sided.
- e. The complainants have never been able to understand/know the actual state of construction though towers seem to be built up, but no progress was observed on finishing and landscaping work. That the respondent has not apprised the complainants with status of the project. That there is a deficiency of service on the part of the respondent and as such respondent is liable to be punished and compensate the complainants. That the complainants are entitled for interest @ 24% p.a. for every month of delay till the possession of the apartment is handed over to the complainant, complete in all respects.
- f. That GST should not have been charged on the final payment, if the builder has received completion certificate and that the VAT was to be charged only from contractors and not from the customers as VAT on sale of flats amounts to be doubled taxed, as taxes are already paid for when buying material for construction.
- g. The delay compensation payable by the respondent @ Rs.5/- per sq. ft. per month for the period of delay as per clause 37 of the buyer agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided. The promoter/respondent has violated the agreement by not giving the possession on the due date as per clause 31 of the agreement dated 28.9.2012. The promoter/respondent has failed to fulfil his obligation under Haryana Real



Estate (Regulation and Development) Act, 2016. The project of respondent comes under the definition of 'ongoing projects' and it is still unregistered in HARERA. That as per section 3(1) first proviso of the Real Estate (Regulation and Development) Act 2016, builder/promoter needs to get register the project within three months from the date commencement of this Act. But the project is still unregistered. The said act of respondent also indicates towards his irresponsible and unprofessional behaviour. That proceedings under section 59 of the Act should be initiated and penalty be imposed upon the complaint by the Authority, for contravention of the mandatory provisions under section 11 of the Act, and rule 14 of the Rules and Regulation dated 21.05.2019 made thereunder. That as on the date the respondent does not have occupation certificate and Fire Department N.O.C., Environmental N.O.C. etc have not been obtained by the respondent and common amenities are yet to be installed.

- h. That as per buyer's agreement dated **28.09.2012**, the possession was to be handed over within 42 months i.e., by 27.3.2016 and latest by 27.09.2016 (i.e., including grace period of 6 months), but the promoter/ respondent has failed to handover the possession to the complainants. The respondent/builder has miserably failed in completing the project and handing over the unit to the allottees/ complainants to which they have paid from their own pocket **an amount of Rs.68,56,479/- against the total consideration of Rs.64,34,042/-**. Since respondent /builder has miserably failed in completing his obligations as per Section 18(1) of the RERA Act the allottee is entitled to seek possession along with interest @ 24% till

the actual handing over the possession. The respondent /builder failed to fulfil its obligations and responsibilities as per the buyer's agreement dated **28.09.2012 (Annexure-2)** to handover the possession within stipulated period. Accordingly, the non-compliance of the mandate contained in section 11 read with section 18 of the Act on the part of the respondent stands established.

C. Relief sought by the complainants:

4. The complainants have sought following reliefs:

- a. The respondent may kindly be directed to get the occupancy certificate and handover the possession of the said residential unit in the project in question in habitable form/condition with all amenities, complete in all respects, and to execute all required documents for transferring/conveying the ownership of the flat/unit.
- b. The respondent may kindly be directed to pay interest at prescribed rate towards delay in handing over the possession of property in question as per the provisions of the Act and the Rules.
- c. To award delay interest 24% for every month of delay, till the handing over of possession of the apartment, complete in all respect, to the complainants.
- d. The respondent may kindly be directed to compensate with compounding interest @24% from the date of execution of buy agreement till date of realization, on paid amount by the complainants to the respondent.
- e. The respondent may kindly be directed to refund the HVAT, and other taxes paid by the complainants to the respondent due to

- delayed construction, and to also refund the rental (house-rent) paid by the complainants for the last five years.
- f. The respondent may kindly be directed to respond to pay interest at the rate of 24% per annum for every month's delay on the amount paid by the complainants from due date of possession i.e., 27.03.2016 till the handing over of possession.
- g. The respondent may kindly be directed to pay an amount of Rs.30,00,000/ to the complainant, as compensation for mental harassment, mental trauma and inconvenience caused to the complainant.
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 complainants have filed the present complaint seeking refund and interest. It is respectfully submitted that complaints pertaining to refund, compensation and interest are to be decided by the Adjudicating Officer under Section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the Act" for short) read with Rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017, (hereinafter referred to as "the Rules") and not by this hon'ble authority.

- b. That, even otherwise, the complainants have no locus-standi and cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the agreement dated 28.09.2012, as shall be evident from the submission made in the following paragraphs of the present reply.
- c. The complainants approached the respondent sometime in the year 2012, for the purchase of an independent unit in its upcoming residential project "Ansals Heights" (hereinafter be referred to as "the project") situated in sector-86, village Nawada-Fatehpur, Gurugram. It is submitted that the complainants prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the complainants were fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondent to undertake development of the same, that the complainants took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondent.
- d. The complainants, in pursuance of the aforesaid application form, were allotted an independent unit bearing no. C-0704, in Tower-C, sales area 1360 sq. ft., (126.35 sq. mtrs.) in the project, namely, Ansals Heights, situated at sector-86, village Nawada Fatehpur, Gurugram. The complainants consciously and willfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that the complainants shall remit every instalment on time as per the payment schedule. The respondent had no reason to suspect the

bonafide of the complainants. The complainants further undertake to be bound by the terms and conditions of the application form and the agreement as well.

- e. That, it is further submitted that despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. It is also submitted that the construction work of the project is swing on full mode and the work will be completed within prescribed time period had there been no force majeure.
- f. That without prejudice to the aforesaid and the rights of the respondent, it is submitted that the respondent would have handed over the possession to the complainants within time had there been no force majeure circumstances beyond the control of the respondent, there had been several circumstances which were absolutely beyond and out of control of the respondent such as orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble Punjab & Haryana High Court duly passed in civil writ petition no.20032 of 2008 through which the shucking/extraction of water was banned which is the backbone of construction process, simultaneously orders at different dates passed by the Hon'ble National Green Tribunal restraining thereby the excavation work causing air quality index being worse, maybe harmful to the public at large without admitting any liability. Apart from these the demonetization is also one of the main factors to delay in giving possession to the home buyers as demonetization caused abrupt. stoppage of work in many projects. the payments especially to workers to only by liquid cash. The sudden restriction

on withdrawals led the respondent unable to cope with the 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. A part 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 complainants have not approached the Hon'ble Adjudicating Officer with clean hands and have not disclosed the true and material facts relates to this case of complaint. The complainants, thus, have approached the hon'ble adjudicating officer with unclean hands and have suppressed and concealed the material facts and proceedings which has direct bearing on the very maintainability of purported complaint and if there had been disclosure of these material facts and proceedings the question of entertaining the present complaint would have not arising in view of the case law titled as ***S.P. Chengalvaraya Naidu Vs. Jagan Nath reported in 1994 (1) SCC*** Page-1 in which the Hon'ble Apex Court of the land opined that non-disclosure of material facts and documents amounts to a fraud on not only the



opposite party, but also upon the hon'ble adjudicating officer and subsequently the same view was taken by even Hon'ble National Commission in case titled as ***Tata Motors Vs. Baba Huzoor Maharaj bearing RP No.2562 of 2012*** decided on 25.09.2013.

- h. That without admitting or acknowledging the truth or legality of the allegations advanced by the complainants and without prejudice to the contentions of the respondent, it is respectfully submitted that the provisions of the act are not retrospective in nature. the provisions of the act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. it is further submitted that merely because the act applies to ongoing projects which registered with the authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainants seeking interest cannot be called in to aid in derogation and ignorance of the provisions of the agreement. It is further submitted that the interest for the alleged delay demanded by the complainants is beyond the scope of the agreement the complainants cannot demand any interest or compensation beyond the terms and conditions incorporated in the agreement. However, in view of the law as laid down by the Hon'ble Bombay High Court in case titled as ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. Union Of India Published In 2018(1) RCR (c) 298***, the liberty to the promoters/developers has been given u/s 4 to intimate fresh date of offer of possession while complying the provision of section 3 of Act as it was opined that the said Act is having prospective effect instead of retrospective. para no.86 and 119 of the above said citation are very much relevant in this regard.

It is further submitted that the interest for the alleged delay demanded by the complainants is beyond the scope of the agreement. The complainants cannot demand any interest or compensation beyond the terms and conditions incorporated in the agreement.

- i. That without prejudice to the contentions of the respondent, it is submitted that the present complaint is barred by limitation. The complainants have alleged that due date of possession in respect of the said unit was 27.03.2016, and therefore, no cause of action is arisen in favor of the complainants on 27.03.2016, and thus, the present complaint is barred by law of limitation and the hon'ble authority lacks jurisdiction.
- j. That, as far as labor cess, Fire Fighting Works and Haryana VAT and GST are concerned, the Central Government levied such taxes, which are still beyond the control of the respondent, it is specifically mentioned in clause 7 & 8 of the agreement, vide which complainants were agreed to pay in addition to basic sale price of the said unit he/she/they is/are liable to pay EDC, IDC together with all the applicable interest, incidental and other charges inclusive of all interest on the requisite bank guarantees for EDC, IDC or any other statutory demand etc. The complainants further agreed to pay his proportionate share in any future enhancement /additional demand raised by authorities for these charges even if such additional demand raise after sale deed has been executed.
- k. That, it would be relevant to mention here in case titled ***as Mr. Abhishek Mohan Gupta Vs. Mis Ireo Grace Realtech (Pvt.) Ltd., Complaint No.2044 of 2018***, date of first hearing 12.03.2019,

decided on 12.03.2019 by the hon'ble 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 complainants at a later stage.

F. Findings on the relief sought by the complainants

F.I. The respondent may kindly be directed to get the occupancy certificate and handover the possession of the said residential unit in the project in question in habitable form/condition with all amenities, complete in all respects, and to execute all required documents for transferring/conveying the ownership of the flat/unit.

12. The respondent is legally bound to meet the pre-requisites for obtaining occupation certificate from the competent authority. It is unsatisfied that even after the lapse of more than 5 years from the due date of possession the respondent has failed to apply for OC to the competent authority. The promoter is duty bound to obtain OC and hand over possession only after obtaining OC.

F.II. The respondent may kindly be directed to pay interest at prescribed rate towards delay in handing over the possession of property in question as per the provisions of the Act and the Rules.

F.III. To award delay interest 24% for every month of delay, till the handing over of possession of the apartment, complete in all respect, to the complainants.

F.IV. The respondent may kindly be directed to compensate with compounding interest @24% from the date of execution of buy agreement till date of realization, on paid amount by the complainants to the respondent.

F.V. The respondent may kindly be directed to respondent to pay interest at the rate of 24% per annum for every month's delay on the amount paid by the complainants from due date of possession i.e., 27.03.2016 till the handing over of possession.

13. In the present complaint, the complainants intend to continue with the project and is seeking delay possession charges @ 24% 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."*

14. 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"

15. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoters. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the 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 28.09.2012 i.e., within 42 months from date of execution as the date of endorsement is not mentioned on the endorsement sheet and the same have neither be alleged by the complainants in complaint nor conflicted by the respondent in its reply. Moreover, 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.

16. 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."

17. 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.
18. 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%.
19. 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;"

20. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **9.30%** by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.

21. 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 28.09.2012, the possession of the subject apartment was to be delivered within 42 months from the date of execution of the agreement. The period of 42 months expired on 28.03.2016. 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 28.09.2016. 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., 28.09.2016 till the 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.VI. The respondent may kindly be directed to pay an amount of Rs.30,00,000/ to the complainant, as compensation for mental harassment, mental trauma and inconvenience caused to the complainant.

22. The complainants are claiming compensation in the above-mentioned reliefs. The authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee can claim. For claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainants may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.


G. Directions of the authority

23. 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., 28.09.2016 till the actual handing over of the possession.
- ii. The arrears of such interest accrued from 28.09.2016 till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10th of the subsequent month as per rule 16(2) of the rules.
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

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

v.1 - 3
(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 30.03.2022

HARERA
GURUGRAM