

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

Complaint no. :	2775 of 2021
First date of hearing:	24.09.2021
Date of decision:	05.04.2022

1. Gautam Puri

2. Samir Puri

Both RR/o: - R-90, Greater Kailash, Part-I,
New Delhi- 110048**Complainants****Versus**M/s Anant Raj Industries limited
Office: CP-1 Sector- 8 IMT Manesar
Dist.- Gurugram, Haryana-122051**Respondent****CORAM:**Dr. K.K Khandelwal
Shri Vijay Kumar Goyal**Chairman
Member****APPEARANCE:**Mohd. Irshad (Advocate)
Mr. Siddharth Bhatia (Advocate)**Complainants
Respondent****ORDER**

1. The present complaint dated 02.08.2021 has been filed by the complainants/allottees in Form CRA 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 to the allottees as per the agreement for sale executed inter se them.

A. Project and unit related details

2. The particulars of the project, the details of 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	"Anant Raj Estate" Sector- 63A, Gurugram		
2.	Project area	108.1245 Acres		
3.	Nature of the project	Plotted Colony		
4.	License details			
5.	License no.	Granted on	Validity	Licensee
	119 of 2011	28.12.2011	27.12.2019	Rose Realty Pvt. Ltd. & ors. C/o Anant Raj Industries Ltd.
	71 of 2014	29.07.2014	28.07.2024	Anant Raj Industries Ltd. & ors. C/o Anant Raj Industries Ltd.
6.	HREERA registered/ not registered	142 of 2017		



7.	Occupation certificate	Not obtained
Details of unit allotted to the complainant no. 1 i.e., Sh. Gautam Puri		
8.	Date of floor buyer agreement	27.06.2014 (As per page no. 37 of the complaint)
9.	Floor no. allotted to complainant no. 1 i.e., Sh. Gautam Puri	Floor unit no. 09 on 2nd floor, pocket- E (As per page no. 38 of the complaint)
10.	Floor area admeasuring	2226 sq. ft. (Total area = floor unit area (1836sq. ft.) + part of basement area (390 sq. ft.)) (As per page no. 38 of the complaint)
11.	Total sale consideration	Rs.2,04,33,430/- (As per payment schedule on page no. 67 of the complaint)
12.	Amount paid by the complainant inclusive of amount adjusted.	Rs.2,04,64,451/- (As per letter of intimation for offer of possession dated 28.01.2021 on page no. 108 of complaint)



Details of unit allotted to the complainant no. 2 i.e., Sh. Sameer Puri		
13.	Date of floor buyer agreement	15.09.2013 (As per page no. 73 of the complaint)
14.	Floor no.	Floor unit no. 08 on 2 nd floor, pocket- E (As per page no. 74 of the complaint)
15.	Floor area admeasuring	2226 sq. ft. (Total area = floor unit area (1836sq. ft.) + part of basement area (390 sq. ft.)) (As per page no. 74 of the complaint)
16.	Total sale consideration	Rs.2,04,33,430/- (As per payment schedule on page no. 104 of the complaint)
17.	Amount paid by the complainant	Rs.1,02,31,215/- (As alleged by the respondent on page no. 03 of reply)
18.	Payment plan	Construction linked payment plan
19.	Possession clause	Clause 4.2 <i>The developer shall endeavor to hand over the possession of the</i>

		<p><i>floor unit within 36 months from the date of execution this floor buyer's agreement with a grace period of 6 month (Tentative handover date). Notwithstanding the same, the developer shall at all times be entitled to an extension of time from the tentative handover date, if the completion of the colony or the part / portion of the colony where the said floor unit is situated is delayed on account of any force majeure event.</i></p>
20.	Due date of delivery of possession	<p>27.12.2017</p> <p>(Calculated from the date of the execution of floor buyer's agreement i.e., 27.06.2014 + 6 months grace period)</p>
21.	Date of offer of possession to the complainant	<p>28.01.2021</p> <p>(As per page no. 108 of the complaint)</p>
22.	Grace period utilization	<p>Since possession clause 4.2 and force majeure clause 14 of the floor buyer's agreement incorporates unqualified reason</p>

		for grace period/extended period of 6 months. Accordingly, the authority literally interpreting the same, allows this grace period of 6 months to the promoter at this stage.
23.	Delay in handing over possession from due date of possession i.e., 27.12.2017 till offer of possession plus two months i.e., 28.03.2021.	3 years 3 months 1 day

B. Facts of the complaint

3. The complainant has made the following submissions in their complaint:

- a. That the present complaint is being filed against respondent for the deficient services which inter alia includes failure to timely offer/deliver possession of residential unit i.e. independent floor, unit no. 9, 2nd floor, plot no. 9, pocket E, admeasuring 2226 sq. ft. (hereinafter referred to as the said unit) along with all easements, privileges, rights and benefits attached thereto in the project known as "Anant Raj Estate" situated at Sector 63-A, Gurugram, Haryana. The total sale consideration for the said unit is ₹ 2,04,33,430/-, including taxes and other charges and the complainants have already paid more than the aforesaid consideration i.e., ₹ 2,04,64,451/-. However, the respondent company delayed the project for more than three and thereafter, while offering possession to the complainants vide their letter dated 28.01.2021, illegally and arbitrarily demanded the payment

of GST from the complainants despite the complainants having already paid the service tax, besides the respondents in a highly arbitrary manner and in clear contravention of the applicable laws, and the assurances and promises given by the respondent, even failed to account for the compensation for delay in completion of the said project. Being aggrieved, the complainants have preferred the present complaint.

- b. That the respondent is a company incorporated under the Companies Act, 1956 and is existing under the Companies Act, 2013. The respondent company is *inter alia* engaged in the real estate sector. The company claims to have built a solid reputation for quality and a great value for money. Also, claimed to have completed a series of real estate projects in and around the NCR region including Gurugram, over the years.
- c. That in June 2014 the respondent through its representative introduced its project "Anant Raj Estate" situated at Sector 63-A, Gurugram, Haryana, to the complainants, thereby representing that the said project was launched in the year 2013 and the possession shall be offered to the allottees within a period of 36 months, with a grace period of 6 months, from the date of execution of floor buyer agreement. The representatives of the respondent company further allured the complainants by showcasing lucrative and world class amenities in the said project. It was further represented to the complainants that the construction at the site had already commenced.



- d. That the complainants under influence and with *bona fide* belief had applied for booking of two units in the said project of the respondent company, and the respondent company, having accepted the said applications of the complainants allotted the following units in favour of the complainants:
- i. Independent floor unit 9 on second floor of the residential building to be constructed on plot no. 9 in pocket e admeasuring 2226 square feet along with all easements, privileges, rights and benefits attached thereto in the project known as "Anant Raj Estate, Sector 63-A, Gurugram, Haryana, allotted in favour of the complainant no. 1 i.e., Gautam Puri; and
 - ii. Independent floor unit 8 on second floor of the residential building to be constructed on plot no. 8 in pocket e admeasuring 2226 square feet along with all easements, privileges, rights and benefits attached thereto in the project known as "Anant Raj Estate, Sector 63-A, Gurugram, Haryana, allotted in favour of the complainant no. 2 i.e., Sameer Puri.
- e. That the allotment of the above said units was followed by a printed and pre drafted floor buyer agreement, which the complainants were required to execute, and following the respondent's instructions, and again on the premise that the respondent shall complete the project and handover the said units to the complainants within the committed period, the complainants executed the said agreement(s) with the respondent. The agreement between the respondent and the complainant no. 1 i.e., Gautam Puri was executed on 27.06.2014, and the agreement

between the respondent and the complainant no. 2 i.e., Sameer Puri was executed on 18.06.2014 though validated with effect from 15.09.2013.

- f. That the project was inordinately delayed, and complainant no. 2 requested the respondent to refund the amount paid by him to the respondent against the above said allotted unit. The respondent conceded that the project shall take some time to complete, however, the respondent did not accede to the request of the complainant no. 2 for refund of the amount paid by him against his allotted unit i.e., Rs.1,02,31,215/-.
- g. That the respondent, in the given situation, offered to transfer the amount paid by complainant no. 2 towards the consideration for the unit which was allotted to his brother i.e., complainant no. 1. The respondent further agreed to add the name of complainant no. 2 along with complainant no. 1 as the allottees of the said unit i.e., independent floor unit 9 on second floor of the residential building to be constructed on plot no. 9 in pocket E admeasuring 2226 square feet.
- h. That accordingly, the total sale consideration paid by the complainants for the only allotted unit i.e. independent floor unit 9 on second floor of the residential building to be constructed on plot no. 9 in pocket E admeasuring 2226 square feet along with all easements, privileges, rights and benefits attached thereto in the project known as "Anant Raj Estate" was Rs.2,04,64,451/- (Rupees Two Crores Four Lakhs Sixty Four Thousand Four Hundred and Fifty One Only).

- i. That in terms of the clause 4.2 of the floor buyer agreement dated 27.06.2014, the respondent was to complete the project and handover possession of the said unit to the complainants within a period of 42 months (including the grace period of six months). Clause 4.2 of the said floor buyer agreement dated 27.06.2014 is reproduced hereunder as:

"The Developer shall endeavor to handover possession of the Floor Unit within 36 months from the date of execution of this Floor Buyer Agreement with a grace period of 6 months ("Tentative Handover Date"). Notwithstanding the same, the Developer shall at all times be entitled to an extension of time from the Tentative Handover Date, if the Completion of The Colony where the said Floor Unit is situated is delayed on account of any Force Majeure Event."

- j. That as per the respondent's commitment to the complainants, and as per the above said clause in the floor buyer agreement dated 27.06.2014, the possession of the allotted unit was to be given to the complainants in December 2017. The complainants had full faith in the respondent, and as the complainants needed the unit for their self-use, they have patiently waited for the respondent to give the possession of the said unit to them. The complainants had time and again visited the respondent's office to enquire about the status of the project, and on every occasion, they were assured that the project shall soon be completed, and the unit shall be offered for possession to the complainants in the coming few months. On every such occasion the complainants had believed the assurances of the respondent.
- k. That after a delay of more than 3 years in completion of the said project, the respondent vide its letter dated 28.01.2021, offered the

possession of the said allotted unit to the complainants, and raised a demand for the alleged balance dues including GST.

- i. That under the aforesaid circumstances, the complainants are left with no alternative but to file the present complaint against the respondent company inter alia seeking relief of possession of the unit allotted to the complainants vide floor buyer agreement dated 27.06.2014 along with the interest and compensation for the delay in offering of the possession, and further, a direction to the respondent to issue a fresh offer of possession, excluding therefrom the demand for GST, within a reasonable time, as directed by this Authority. However, in the event, the possession of the said unit cannot be delivered by the respondent, the complainants are entitled to refund of ₹ 2,04,64,451/- along with simple interest @ 12% per annum with effect from the date when the said amount was paid by the complainants to the respondent.

C. Reliefs sought by the complainant

4. The complainant is seeking the following relief:
 - a. Direct the respondent company to reissue the offer of possession excluding therefrom the demand of GST.
 - b. Direct the respondent to handover Direct the Respondent to handover the physical possession of independent floor unit 9 on second floor of the residential building to be constructed on plot no. 9 in pocket E admeasuring 2226 square feet along with all easements, privileges, rights and benefits attached thereto in the project known as "Anant Raj Estate, Sector 63-A, Gurugram,

Haryana, in all aspects, as agreed under floor buyer agreement dated 27.06.2014.

- c. Direct the respondent company to execute registered sale deed in favour of the complainant pertaining to independent floor unit 9 on second floor of the residential building to be constructed on plot no. 9 in pocket e admeasuring 2226 square feet along with all easements, privileges, rights and benefits attached thereto in the project known as "Anant Raj Estate, Sector 63-A, Gurugram, Haryana.
 - d. Direct the respondent to pay compensation for the delayed period in handing possession of the said unit in terms of the RERA Act at the rate which this authority deems fit and proper.
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. The respondent herein known as "Anant Raj Limited" previously known as "Anant Raj Group", is a company incorporated under the Companies Act, 1956 with the registered/corporate office of the respondent is at H-65, Connaught Circus, New Delhi-110001. The respondent is a renowned builder in the field of construction business and started constructing the project "The Anant Raj Estate" at Sector 63-A, Gurugram having villas/ bungalows/floors.

- b. The said project is spread across many acres of green land in one of the Gurgaon's most and posh areas surrounded with natural surroundings. The said township project comprises of plots, luxury villa's, group housing, floors and commercial spaces as well. The township has been conceived to be an international standard, low-rise gated community. Being totally self-contained, it will encompass all the critical infrastructural facilities. The concept is designed to meet all home needs - initially plots being available, followed up with built-up home options like villas/bungalows/floors on offer.
- c. The project is strategically located at Sector 63 A, Gurgaon, surrounded by an elegant of posh residential projects, & within close vicinity from Gurgaon - New Delhi Expressway & Metro Stations, malls on MG Road Gurgaon as well as the Indira Gandhi International Airport which is in close proximity of 15 Kms from the said project.
- d. In the said project the Anant Raj Limited has provided the following facilities/amenities power back up, gated pockets/blocks with security, fully lit township with street lighting, kriti hospital already operational and running commercial shopping centre, community centre/club spread over approx.1.60 lakh sq. ft. area with swimming pool is under construction.
- e. The delays were caused on account orders passed by the Hon'ble National Green Tribunal and the State Pollution Control Board which issued various directions from 2015 till 2018 (every year) to builders to take additional precautions and steps to curtail

pollution. On account of the aforementioned reasons the progress of the work of the respondent was abruptly hampered. It is further submitted that all these events led to suspension and stoppage of works on several occasions which also resulted in laborers and contractors abandoning work. Since the National Green Tribunal had passed order governing the entry and exit of vehicles in the NCR region. Also, the Hon'ble NGT had passed orders with regards to phasing out the 10 years old diesel vehicles from NCR. The pollution levels of NCR region have been quite high for a couple of years at the time of change in weather in November every year. As a result of various directions from the authorities at different regarding water shortage and pollution control etc., coupled with laborers and contractors abandoning the works; the respondent had to run from pillar to post in order to find new contractors and laborers, thus affecting the progress of the project. Hence, the respondent is not liable for the delay in handing over possession of the flat/ apartment of the complainant. It is respectfully submitted that the respondent has time and again informed the complainant about the progress of the project.

- f. Furthermore, on 08.11.2016, the Central Government announced the demonetization of all 500 and 1,000 banknotes, due to which the respondent was unable to continue with the construction for about 6- months until the situation normalized. During this period the contractors could not make payments to the labor in cash as majority of the casual labor 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 labor on a site of the magnitude of the project in question are Rs. 3-4 Lakhs per day and the work at site for almost halted for 7-8 months as the bulk of the labor being unpaid went back to their hometown, which resulted in shortage in labor. Hence, the implementation of the project in question got delayed on account of the issues faced by the contractor due to the said notification by the Central Government. Further, there are studies of the Reserve Bank of India and independent studies undertaken by scholars of different institutes universities and also newspaper reports Reuters of the relevant period of 2016-2017 on the said issues of impact of demonetization on real estate industry and construction labor. The Reserve Bank of India has also published reports on impact of demonetization. In the report macroeconomic impact of demonetization, it has been observed and mentioned by the Reserve Bank of India at page no. 10 and 42 of the said report that the construction industry was in negative during Q3 & Q4 of 2016-2017 and started showing improvement only in April 2017. Thus, in view of the aforementioned studies and reports, the said event of demonetization was beyond the control of the respondent and hence, the time period for offer of possession should deem to be extended for 6 months on account of demonetization alone.

- g. Several other allottees were in default of the agreed payment plans and the payment of construction linked installments was delayed or not made resulting in badly impacting and delaying the

implementation of the entire project, since the respondents were unable to pay the contractors on time and due to which the entire project was hampered.

- h. Due to extremely heavy rainfall in Gurugram in the year 2016 and unfavourable 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 the year due to adverse/ severe weather conditions.
 - i. The respondent recently informed the complainant that despite respondent facing several hindrances which were beyond the control of respondent, the project is completed and occupancy certificates for 26 plots /buildings have already been granted by the competent authority including the unit allotted to the complainants and many families have started living there. The complainants have already been intimated about the same and accordingly, the instant complaint is not maintainable.
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(j) 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 of the authority on relief sought by complainant

F. I Direct the respondent to pay compensation for the delayed period in handing possession of the said unit in terms of the RERA Act at the rate which this authority deems fit and proper.

12. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso 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."

13. Clause 4.2 of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

"7.1. POSSESSION

The developer shall endeavour to hand over the possession of the floor unit within 36 months from the date of execution this floor buyer's agreement with a grace period of 6 month (Tentative handover date). Notwithstanding the same, the developer shall at all times be entitled to an extension of time from the tentative handover date, if the completion of the colony or the part / portion of the colony where the said floor unit is situated is delayed on account of any force majeure event."

14. 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 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 allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter 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 promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

Admissibility of grace period: The promoter has proposed to hand over the possession of the apartment within a period of 36 months from date of agreement. The period of 36 months expired on 27.06.2017. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period in the possession clause, after expansively referring to the facts and documents placed on record by the promoter company for force majeure reasons the authority, allows the grace period of 6 months.

15. **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.

The legislature in its wisdom in the subordinate legislation under 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.

16. 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., **05.04.2022** is 7.30%. Accordingly, the prescribed rate of interest will be MCLR+2% i.e., 9.30%.
17. 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 allottees, as the case may be.

Explanation. —For the purpose of this clause—

(i) 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;

(ii) the interest payable by the promoter to the allottees 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 allottees to the promoter shall be from the date the allottees defaults in payment to the promoter till the date it is paid;"

18. 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.
19. 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 4.2 of the agreement executed between the parties on 27.06.2014, the possession of the subject apartment was to be delivered within 36 months from the date of execution of agreement. The period of 36 months expired on 27.06.2017. 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 27.12.2017. The respondent has offered the possession of the subject apartment on 28.01.2021. 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., 27.12.2017 till the offer of the possession plus two months i.e., 28.03.2021 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.

20. Also, the amount so paid by the respondent to the complainant towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.

F.II Direct the respondent company to reissue the offer of possession excluding therefrom the demand of GST

24. The authority has decided this issue in the complaint bearing no. 4031 of 2019 titled as Varun Gupta V/s Emaar MGF Land Ltd, wherein the authority has held that for the projects where the due date of possession was prior to 01.07.2017 (date of coming into force of GST), the respondent/promoter is not entitled to charge any amount towards GST from the complainants/allottees as the liability of that charge had not become due up to the due date of possession as per the buyer's agreements. In the present complaint, the possession of the subject unit was required to be delivered by 27.12.2017 and the incidence of GST came into operation on 01.07.2017. So, the respondent is right in charging GST, but the respondent must transfer the benefit of input tax credit to the allottee.
25. In the present case, as per intimation for offer of possession letter dated 28.01.2021, all the payable components are given inclusive of GST applicable along with citation "if any". Moreover, there is no specific payment plan is given according to which the payment payable could be ascertained, that as to what payment is to be paid before the incidence of GST and what payment is to be paid after the incidence of GST. It is to be noted that GST shall be applicable on the payment due after incidence of GST i.e., 01.07.2017. In this regard, the respondent is

directed to provided details of payment plan and fresh statement of account giving separate details for taxes applicable.

F.III Direct the respondent to handover Direct the Respondent to handover the physical possession of independent floor unit 9 on second floor of the residential building to be constructed on plot no. 9 in pocket E admeasuring 2226 square feet along with all easements, privileges, rights and benefits attached thereto in the project known as "Anant Raj Estate, Sector 63-A, Gurugram, Haryana, in all aspects, as agreed under floor buyer agreement dated 27.06.2014

26. The respondent has offered the possession of floor on 28.01.2021 but the possession of said floor is yet not handed over by the respondent due to non-payment of due installment. There is nothing on record showing amount of installment due and the demand raised vide intimation for offer of possession is also under dispute. Therefore, the complainant is directed to make payment towards due installment as per fresh statement of account to be issued by the respondent and to take the possession of the floor.

F.IV. Direct the respondent company to execute registered sale deed in favour of the complainant pertaining to independent floor unit 9 on second floor of the residential building to be constructed on plot no. 9 in pocket e admeasuring 2226 square feet along with all easements, privileges, rights and benefits attached thereto in the project known as "Anant Raj Estate, Sector 63-A, Gurugram, Haryana

27. The respondent is under obligation as per section 17 of Act to get the conveyance deed executed in favour of the complainant. The said relief can be addressed after payment of due installment by the complainant as per fresh statement of account and after taking the possession of the said floor.

G. Directions of the authority

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

- a. 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., 27.12.2017 till the expiry of 2 months from the date of OC i.e., 28.03.2021.
- b. The arrears of such interest accrued from 27.12.2017 till 28.03.2021 shall be paid by the promoter to the allottee within a period of 90 days from date of this order.
- c. The conveyance deed has also been executed between the parties therefore, the complainant is directed to take the possession of the said unit within 2 months from the date of this order.
- d. 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 complainants /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 delay possession charges as per section 2(za) of the Act.

- e. Also, the amount so paid by the respondent to the complainant towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.
 - f. If there is no amount outstanding against the allottees or less amount outstanding against the allottees then the balance delay possession charges shall be paid after adjustment of the outstanding against the allottees.
 - g. The respondent shall not charge anything from the complainants which is not the part of the buyer's 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.
29. Complaint stands disposed of.
30. File be consigned to registry.

V.I - 3
(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.04.2022