

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

Complaint no. : 2792 of 2020
First date of hearing: 13.11.2020
Date of decision : 20.07.2021

1. Ashiana Housing Ltd.
Regd. office at: Tower-1, 8th Floor,
Vatika Business Park, Sector - 49,
Sohna Road, Gurugram - 122001

2. Universe Heights (India) Pvt. Ltd.
Regd. office at: 5G/1 Everest 46/C
Chowringhee Road, Kolkata
West Bengal- 700071

Complainants

Versus

Indira Mahlawat and Rajvir Mahlawat
Both R/o: 84/7, Sector - 8, HIG flat,
Pratap Nagar, Sanganer, Jaipur,
Rajasthan - 302033

Respondents

CORAM:

Shri Samir Kumar
Shri Vijay Kumar Goyal

**Member
Member**

APPEARANCE:

Sh. Sukhbir Yadav
Sh. Rajvir Singh Mahlawat

Advocate for the complainants
In- person

ORDER

1. The present complaint dated 28.09.2020 has been filed by the complainants/promoters 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 19 (6) (7) and (10) of the Act wherein it is inter alia prescribed that the allottees shall take physical possession of the unit, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said unit. It is also the obligation of all allottees to make necessary payments in the manner and within time as specified in the agreement for sale under section 19(6) and to pay interest, at such rate as may be prescribed, for any delay in payments as per section 19(7) of the Act.

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:

S.No.	Heads	Information
1.	Project name and location	"Ashiana Anmol", Sector- 33, Tehsil Sohna, Gurugram.
2.	Project area	13.3375 acres
3.	Nature of the project	Group housing project
4.	DTCP license no. and validity status	20 of 2014 dated 11.06.2014 valid till 10.06.2021
5.	Name of licensee	Universe Heights (India) Pvt. Ltd.
6.	RERA Registered/ not registered	Registration no. 26 of 2017 dated 28.07.2017 (area

		registered 3.80 acres)
7.	RERA registration valid up to	31.10.2019
8.	Extension applied on	Registration no. 01 of 2020 dated: 20.01.2020 (area registered 3.80 acres)
9.	RERA extension valid up to	31.10.2020
10.	Unit no.	M-209 [page 47 of complaint]
11.	Unit measuring	1275 sq. ft. [page 47 of complaint]
12.	Date of execution of Flat buyer agreement	08.04.2015 [page 46 of complaint]
13.	Commencement of construction	March 2016 [As alleged by the complainants on page 100]
14.	Occupation Certificate	19.06.2019 [page 91 of complaint]
15.	Date of offer of possession	19.08.2019 [page 101 of complaint]
16.	Payment plan	Construction linked payment plan. [page 73 of complaint]
17.	Total consideration	Rs.68,09,325/- [page no. 42 of complaint]
18.	Total amount paid by the respondent allottees as per statement of account dated: 01.02.2020	Rs.58,18,043/- [page 108 of complaint]
19.	Due date of delivery of possession as per clause 6.1 of the flat buyer agreement 36 months from the date of start of construction with a grace period of 6 months. [Page 55 of complaint]	September 2019 [Note- Grace period is allowed] [as OC was applied on 11.01.2019]

B. Facts of the complaint

3. That the complainants had planned and decided to develop a group housing complex known as 'ASHIANA ANMOL' in the revenue estates of Village Dhunela, Sector - 33, Sohna, District Gurugram, Haryana. The complainants were well and sufficiently entitled to develop, sale and deal with the residential units which were proposed to be constructed on the land measuring approximately 13.3375 acres and the requisite license was granted by the competent authority i.e. the DTCP, Haryana, Chandigarh vide license bearing No. 20 of 2014 dated 11.06.2014 in favour of complainant no. 2.
4. That the complainant no. 1 i.e. Ashiana Housing Limited and complainant no. 2 i.e. Universe Heights (India) Private Limited have entered into a registered development agreement dated 24.07.2014, whereby, it (license holder) has bestowed the development rights on the project land to the complainant no. 1 (Developer).
5. That the respondents after taking into consideration the veracity of the said project and independent enquiry, on the basis of their own free will and understanding, had applied for allotment of an unit in the project by signing the expression of interest on 12.02.2015 and application form on 26.02.2015 and had agreed to be bound by the terms and conditions stipulated in the Booking Application Form. Only



after being fully satisfied with regard to all aspects of the project, including but not limited to the capacity/capability of the complainants to undertake conceptualization, promotion, development and construction of the project, the respondents took an independent decision and informed the decision to purchase an unit no. M-209, Block – B-3.

6. That based on the application for booking, complainant no.1 vide allotment offer letter dated 18.03.2015 allotted unit no. M – 209, Block – B-3 having tentative super area of 1275 sq. ft. for a total sale consideration of Rs. 68,09,325.00/- (excluding taxes). It was intimated to the respondents that the allotment of the unit shall be subject to fulfilment of the terms and conditions of the unit buyer's agreement. The unit/ flat buyer's agreement was executed between the parties on 08.04.2015 and the unit was purchased under the construction link payment plan.
7. As per clause No. 6.1 of the flay buyer's agreement, the complainants undertook to complete the construction of said building within 36 months from start of construction with a grace period of six months. It is submitted that State Environment Impact Assessment Authority, Haryana, issued Environment Clearance for said project on 28.12.2015 and the complainants were issued a demand letter on stage "On

Commencement of excavation” on 01.03.2016, therefore due date of possession with grace period was 01.09.2019.

8. That the complainant no.1 sent payment demands as per the terms of the allotment and mutually agreed payment plan. However, the respondents failed to abide by the commitment of making timely payments.
9. That the complainants had completed the project well within the timeline and accordingly applied for Occupation Certificate to the concerned department on 11.01.2019 and received the OC on 19.06.2019 and 17.10.2019. It is pertinent to mention here that OC for concerned tower was received on 19.06.2019.
10. That the respondent no. 1 sent a letter to the complainant no. 1 for cancellation of agreement for Ashiana Anmol flat no. M-209 on 09.08.2019 stating that as per the terms and conditions of the agreement, the possession of the flat was to be delivered within 36 months from the date of the agreement by 08.04.2018 but as per the status on 09.08.2019, the company could not handover the flat in time and failed to comply with clause 6.1 of the agreement. The letter was replied by the complainant no. 1 on 16.09.2019 and a request was made to take the possession of unit after making the final payments.

11. That the complainant no. 1 after obtaining OC, had sent a letter of "Intimation for Possession" on 19.08.2019, and requested the respondents to take the possession of said unit after making the payment. It was specifically mentioned in letter that "the owner shall take possession of the said unit, within 30 days of issue of this letter, failing which he/she shall be liable to pay holding charges @ Rs. 5/- per sq. ft. plus taxes per month till possession is taken". Thereafter reminder letters/emails for "Intimation for Possession" on 14.11.2019, 15.11.2019, 07.01.2020 & 19.02.2020 were also sent. It is submitted that the respondents have failed to complete the documentation formalities and make payments towards outstanding amount despite reminders and did not come forward to take the possession of said unit.
12. That the due date to handover the possession of the unit as per the terms of the Flay buyer's Agreement was 01.09.2019 and the complainant no. 1 had raised the demand of Rs. 9,73,185/- through demand letter dated 01.02.2020, as per agreed payment plan "one month before possession" on 01.05.2019 and had offered the possession on 19.08.2019. It is submitted that the project is ready for possession and many families had taken possession and living there.
13. That subject to the respondents complying with their obligations, the possession of the unit was supposed to be



offered to them in accordance with the agreed terms and conditions of the buyer's agreement including force majeure events. Clause 6.1 of the buyer's agreement states that "the builder covenants with the Buyer the construction of the said building shall be completed within 36 months from start of construction with a grace period of six months. However, that the time for completion shall be deemed to have been extended in the event of non-availability of building materials or delay in respect of instalments of the consideration amount from the buyer or buyers of other units and delay due to any reasons beyond the control of the builder i.e. Force-Majeure". From the terms of the buyer's agreement, it is evident that, the time for offer of possession was to be computed from the start of construction after the receipt of all requisite approvals. Even otherwise, the construction could not be raised in the absence of the necessary approvals. It is pertinent to mention here that State Environment Impact Assessment Authority, Haryana, issued Environment Clearance for said project on 28.12.2015 and the complainants commenced the construction on 01.03.2016. Therefore, due date of possession with grace period comes out 01.09.2019.

14. That it is pertinent to mention that the implementation of the said project was hampered due to non-payment of



instalments by allottees including the respondents on time and due to the events and conditions which were beyond the control of the complainants. Even though the complainants completed the project on time and offered the possession as per terms of buyer's agreement.

15. That in last five successive years i.e. 2015-2016-2017-2018-2019, the Hon'ble National Green Tribunal has been passing orders to protect the environment of the country and especially for the NCR region. The Hon'ble NGT had passed orders governing the entry and exit of vehicles in NCR region. Also, the Hon'ble NGT has passed orders regarding phasing out the 10-year-old diesel vehicles from NCR. The pollution levels of NCR region have been quite high for the last couple of years at the time of change in weather in November every year. The contractor of complainants could not undertake construction for approximately 5-6 months in compliance of the orders of Hon'ble National Green Tribunal. There were frequent disturbances and disruptions in completion of construction activity at the spot causing delays which were unforeseen and absolutely beyond the power and control of the complainants.

16. That it is relevant to mention that the complainants/developers have already spent huge amount of money towards the due construction and development of the

various blocks/ segments/ constituents/ parts/ phases of the group housing colony of which occupation certificate has been granted and the notice for offer for possession was sent to the respondents, thereby calling upon the respondents to pay the outstanding amount and clear all the possession related formalities and paperwork. Therefore, it is the complainants/developers who after having spent enormous sums of money (including funds borrowed from banks and financial institutions and other entities) and having duly performed their obligations.

17. That in the said project of the complainants, possession has already been offered to the eligible allottees. The project is very much habitable. Furthermore, the complainants have provided for all the facilities and amenities as provisioned for the comforts of the allottees.
18. That the respondents have violated several provisions of the RERA Act, 2016 and Haryana RERA Rules, 2017 and are liable for the same. It is submitted that as per Section 38 of the RERA Act, 2016, this Hon'ble Authority has the power to impose penalty or interest in regard to any contravention of obligations casted upon the respondents under the RERA Act, 2016 or the Haryana RERA Rules, 2017 and the regulations.
19. That the respondents in utter disregard of their responsibilities have left the complainants in the lurch and



the complainants have been forced to chase the respondents for handing over the physical possession of the allotted unit for recovery of their dues along with interest on the period of delay in paying the instalments by the respondents. Thus, the complainants have no other option but to seek justice from this Hon'ble Authority. Thus, it is very much clear that despite finishing the construction of the unit of the respondents and offering possession to them, the respondents are not coming forward intentionally to do the needful. The respondents are wrongly and illegally withholding the dues of the complainants and are harassing them unnecessarily. The respondents are committing blatant breaches of the terms and conditions of booking and Flay buyer's Agreement. The respondents cannot be allowed to get away with their illegal acts. Under the circumstances, it is expedient and in the interest of justice that the respondents be directed by this Hon'ble Authority to forthwith take possession of the unit in question and to pay their outstanding dues along with interest as per the possession letter dated 19.08.2019 already sent to the respondents.

20. That the cause of action for the present complaint is recurring one on account of the failure of the respondents to perform their obligations within the agreed time frame. The cause of action again arose in August, 2019 when the



respondents failed to comply with the aforesaid possession letter and finally about a week ago when the respondents failed to take the physical possession of the unit and to make payment of the balance due amount, statutory charges and the interest accrued on the delayed payments.

21. That this Hon'ble Authority has jurisdiction to entertain the present Complaint since the project is situated in Gurugram within the jurisdiction of this Hon'ble Authority.
22. That the complainants further declare that the matter regarding which this complaint has been made is not pending before any court of civil law or any other such authority or any other such tribunal.

C. Relief sought by the complainant:

23. The complainant has sought following relief:
 - (i) Direct the respondents to take the possession of the said unit which is ready and in the state of being occupied, after the completion of the requisite documentation formalities.
 - (ii) Direct the respondents to pay the balance sale consideration and delayed interest as per the flay buyer's agreement /Section 19 of the Real Estate (Regulation and Development) Act, 2016 to the complainants.



(iii) Direct the respondents to pay holding charges as per the terms and conditions of the flat buyer's agreement to the complainants as per HRERA norms.

24. The authority issued a notice dated 16.10.2020 of the complaint to the respondents by speed post and on the given email addresses at ayush.gupta@ashianahousing.com, avinash532110@gmail.com, adv.sukhbiryadav@gmail.com. The delivery reports have been placed in the file. Thereafter, a reminder notice dated 15.07.2021 for filing reply was sent to the respondents on aforesaid email addresses. Despite service of notice, the respondents had not preferred to file reply to the complaint within the stipulated period. On 20.07.2021, Shri Rajvir Singh (co-respondent), husband of respondent no. 1 appeared in person and orally submitted that the company-complainant is not ready to adjust the amount which was deposited with them at the time of booking of unit located at Neemrana- Rajasthan and brought certain shabby photographs also. The matter so raised during the arguments is not under the jurisdiction of the Authority. Accordingly, the authority is left with no other option but to decide the complaint as the pleas taken by the respondents during arguments are not tenable.



25. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the complainants.

E. Jurisdiction of the authority

E.I Territorial jurisdiction

26. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, 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

27. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the allottee as per Section 31(1) of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of 19 (6) (7) and (10) of the Act.

F. Findings of the Authority

28. For the adjudication of present complaint, several issues were raised, and these are being dealt with in the succeeding paras of this order.

F.1 Issue: Whether the respondents have violated the provisions of section 19(6) read with section 19(7) of the Act?

29. As per the observations of authority, the total consideration of the unit is Rs. 68,09,325.00/- (excluding taxes). The respondents/allottees have paid only Rs.58,18,043/- and sum of Rs.9,57,039/- is still outstanding which in spite of the complainant's demand letters have not been paid by the respondent-allottees. As per clause 4.1 of flat buyer agreement, it is the obligation of allottee to make timely payments for the total sale consideration. Clause 4.1 of flat buyer agreement is reproduced as under:

CLAUSE 4.1: TIME IS THE ESSENCE:

4.1 Time is the essence with respect to buyer's obligations to pay the Total Sale Consideration as provided in Part-II of Schedule-"C" along with other payments such as applicable stamp duty, registration fee and other charges stipulated under this agreement to be paid on or before the due date or as and when demanded by the Builder as the case may be and also to perform or observe all other obligations of the buyer under this agreement.

30. Therefore, authority is satisfied that the respondents are in contravention of section 19(6) and (7) of the Act. The relevant provision of the Act has been reproduced below:

19. Rights and duties of allottees:

(6) Every allottee, who has entered into an agreement or sale to take an unit, plot or building as the case may be, under Section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground, rent, and other charges, if any.

(7) The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).

31. That the Hon'ble High Court of Bombay in the matter titled ***Neelkamal Realtors Suburban Pvt. Ltd. And Anr vs. Union of India*** has already held that RERA strikes the balance between the promoter and allottees, the relevant para of judgement is reproduced herein below:

"In the case of Cellular Operations Association of India and ors. Vs. Telecom Regulatory Authority of India and ors. (Supra), the Hon'ble Supreme Court held that there cannot be any dispute in respect of settled principles governing provisions of Articles 14, 19(1)(g) read with Article 19(6). But a proper balance between the freedom guaranteed and the social control permitted by Article 19(6) must be struck in all cases. We find that RERA strikes balance between rights and obligations of promoter and allottees. It is a beneficial legislation in the larger public interest occupying the field of regulatory nature which was absent in this country so far."



F.2 Issue: What should be the rate of interest to be paid by the respondent/allottee?

32. It has been contended by the complainant that as per standard flat buyer agreement, the respondents/allottees were under an obligation to pay the instalments within the time and to bear 18% simple interest on dues. The relevant Clause 4.2 of standard flat buyer agreement is reproduced below:

"4.2 The Buyer shall pay to the builder interest at the rate of 18% per annum compounded every month on all the amounts which become due and payable by the buyer to the builder under the terms of this agreement."

33. However, section 19(6) and (7) of the Act states that the allottee shall make necessary payments in the manner and within time as specified in the agreement for sale and to pay interest, at such rate as may be prescribed, for any delay in payments 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 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. The Haryana Real Estate Appellate ***Tribunal in Emaar MGF Land Ltd. vs. Simmi Sikka (Supra)*** observed as under:

"64. Taking the case from another angle, the allottee was only entitled to the delayed possession charges/interest only at the rate of Rs.15/- per sq. ft. per month as per clause 18 of the Buyer's Agreement for the period of such delay; whereas, the promoter was entitled to interest @ 24% per annum compounded at the time of every succeeding instalment for the delayed payments. The functions of the Authority/Tribunal are to safeguard the interest of the aggrieved person, may be the allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of his dominate position and to exploit the needs of the homer buyers. This Tribunal is duty bound to take into consideration the legislative intent i.e., to protect the interest of the consumers/allottees in the real estate sector. The clauses of the Buyer's Agreement entered into between the parties are one-sided, unfair and unreasonable with respect to the grant of interest for delayed possession. There are various other clauses in the Buyer's Agreement which give sweeping powers to the promoter to cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the Buyer's Agreement dated 09.05.2014 are ex-facie one-sided, unfair and unreasonable, and the same shall constitute the unfair trade practice on the part of the promoter. These types of discriminatory terms and conditions of the Buyer's Agreement will not be final and binding."

33. 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., 20.07.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e. 9.30% per annum.

34. 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;"*

35. Therefore, the respondents shall be charged at the prescribed rate i.e., 9.30% per annum by the complainant/promoter which is the same as is being granted to them in case of delayed possession charges.



36. On consideration of the documents available on record and submissions made by the party regarding contravention of provisions of the Act, the authority is satisfied that the respondents are in contravention of the section 19(6) and (7) of the Act. By virtue of clause 4.1 of the agreement executed between the parties on 08.04.2015, it is the buyer's obligation to timely give payments for the total sale consideration. The respondents have paid only Rs.58,18,043/- and a sum of Rs.9,57,039/- on account of pending instalments & interest is outstanding. Accordingly, it is the failure of the respondents/allottees to fulfil their obligations and responsibilities as per the agreement to make timely payments to the promoter, accordingly, the non-compliance of the mandate contained in section 19(6) and (7) of the Act on the part of the respondent is established.


G. Directions issued by the Authority

37. 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 allottees as per the function entrusted to the authority under section 34(f) :-

- i. The respondents/allottees shall be charged interest at the prescribed rate of interest that is at the rate 9.30% per annum by the complainants/promoters which is

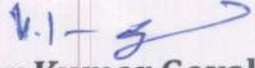
the same as is being granted to the complainants/promoters in case of delayed possession

- ii. The respondents/allottees are directed to take the possession of the allotted unit as offered by the complainants.
 - iii. The respondents/allottees shall make the requisite payments as per the provisions of section 19(6) and (7) of the Act, within a period of 30 days.
 - iv. The complainants/promoters shall not charge anything which is not mentioned in the flat buyer agreement.
1. Complaint stands disposed of.
 2. File be consigned to the registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Vijay Kumar Goyal)

Member

Date: 20.07.2021

JUDGEMENT UPLOADED ON 07.09.2021