

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

Complaint no. : 3817 of 2021
Date of filing complaint : 17.09.2021
First date of hearing : 04.10.2021
Date of decision : 12.07.2021

Shri Mayaank Kumar Bajaj R/O: - A-48, Saraswati Vihar, Deepali Chowk, Pitampura	Complainant
Versus	
M/s Selene construction Ltd. Regd. Office at: - M-62 & 63, 1st floor, Connaught place	Respondent

CORAM:	
Dr. K.K. Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
None	Advocate for the complainant
Sh. Rahul Yadav	Advocate for the respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia



prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se.

A. Unit and project related details

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

S.N.	Particulars	Details
1.	Name of the project	Indiabulls Centrum Park
2.	Nature of project	Residential Complex
3.	RERA Registered/ Not Registered	Not Registered
4.	DTPC License no.	N/A
	Validity upto	N/A
	Name of licensee	N/A
	Licensed area	N/A
7.	Unit no.	K3-144 [page no. 34 of reply]
8.	Unit measuring	1900 sq. ft. (page no. 34 of reply)
9	Letter of allotment	12.05.2011



		(page no. 17 of complaint)
10	Date of execution of flat buyer's agreement	22.06.2011. (page no. 19 of complaint)
11.	Possession clause	21. Possession The Developer shall endeavor to complete the construction of the/said building/Unit within a period of three years, with an six months grace period thereon from the date of execution of the Flat Buyers Agreement subject to timely payment by the Buyer(s) of Total Sale Price payable according to the Payment Plan applicable to him or demanded by the Developer. The Developer on completion of the construction/development shall issue final call notice to the Buyer, who shall within 30 days thereof, remit all dues and take possession of the Unit. In the event of his/her failure to take possession of the Unit within the stipulated time for any reason whatsoever, he/she shall be liable to bear all taxes, levies, outflows and maintenance charges/ cost and any other levies on account of the allotted Unit along with interest and penalties on the delayed payment, from the dates these are levied/made applicable irrespective of the fact that the Buyer has not taken possession of the Unit or has not been enjoying benefit of the same. The Buyer in such an eventuality shall also be liable to pay the

		holding charges@ Rs.5per sq.ft (of the super area) per month to the Developer, from the date of expiry of said thirty days till the time possession is actually taken over by the Buyer.
12.	Due date of possession	22.12.2014(including grace period) (calculated from the date of execution of buyer agreement)
13.	Basic sale price	Rs. 57,60,000/- (page no. 41 of complaint)
14.	Total amount paid by the complainant	Rs. 66,43,500/- (as alleged by the complainant)
15.	Occupation certificate dated	23.07.2018 (page no. 72 of reply)
16.	Offer of possession	17.09.2018 (page no. 37 of complaint)
17	Grace period	Grace period allowed being unqualified

B. Facts of the complaint

- That the complainant believing the representations of the respondent of timely completion and standardized construction of the project booked a flat bearing no. K3-144, 14th floor, tower T-K, (hereinafter referred as the said 'unit') in the project "Indiabulls Centrum Park" situated in sector-103, Gurugram, Haryana (hereinafter referred as the said 'project') with an approximate super area of 1900 sq. ft. at basic sale price of Rs. 66,43,500/-.



4. That the respondent issued allotment letter to the complainant on 12.05.2011 and entered into a flat buyer's agreement (hereinafter referred as the 'FBA') dated 22.06.2011. The complainant was required to make payments as per the payment schedule attached as annexure-I to the agreement.
5. That the complainant after making payment of the total sale consideration amount, waited for the possession of the flat, however to no avail. It is pertinent to mention that the complainant has been making payment(s) towards the loan amount. Furthermore, pursuant to the housing loan, the complainant has been making regular payment towards monthly interest on the principal loan amount.
6. Vide letter dated 11.08.2011, the respondent informed the complainant that the covered area was inclusive of the balconies and an error has crept in clause 3 of the agreement and currently under clause 3 as "1332" sq. ft. i.e., 123.78 sq. mts, be read as 1541 sq. fts. i.e., 143.16 sq. mts.
7. It is pertinently to mention here that despite payment of almost entire total sale consideration amount by the complainant in the year 2014, save and except the amount to be paid at the time of registration of sale deed, the respondent admittedly offered possession of the flat vide letter dated 17.09.2018. By way of said letter, the respondent has demanded maintenance charge of Rs.33,630/- and called upon the complainant to execute the conveyance deed in respect of the flat.



8. The respondent was bound to deliver the possession of the apartment by 30.06.2016. It is submitted that the complainant cannot be expected to wait endlessly for possession.
9. That the complainant has suffered immense mental, physical, and financial agony at the hands of the respondent. It is further submitted that the complainant requested the respondent several times for the redressal of the grievances, but it has never responded to requests to deliver the possession of the unit.

C. Relief sought by the complainant.

10. The complainant has sought following relief:

- (i) Direct the respondent to pay interest for delay of every month @18% p.a. and to handover the possession of the subject unit.
- (ii) Direct the respondent to pay compensation to the complainant towards harassment, mental agony, and instalments paid towards loan amount.
- (iii) Direct the respondent to pay costs towards litigation incurred by the complainant.

D. Reply by the respondent.

11. That the complainant himself is defaulter under section 19 (6), 19 (7) and 19 (10) of the Real Estate (Regulation and Development) Act, 2016 and not in compliance of these sections. The complainant cannot seek any relief under the provision of the Act of 2016 or rules frame thereunder.

12. That the present complaint is devoid of any merit and has been preferred with the sole motive to harass the respondent. It is submitted that the allegations made in the instant complaint are wrong, incorrect and baseless in fact and law. Nothing stated in the said complaint shall be deemed to be admitted by the respondent merely on account of non-transverse, unless the same is specifically admitted herein. The instant complaint has been preferred with the sole motive to extract monies from the respondent and hence the same is liable to be dismissed in limine.
13. It is respectfully submitted that a unit bearing no. K3144 booked by complainant in the project "Indiabulls Centrum Park", an agreement was executed on 22nd June 2011. The complainant has filed the present complaint for seeking delay interest. However, the complainant has deliberately concealed the fact that the respondent already gave credit of Rs. 3,68,068/- to him on 27.07.2018, which was duly accepted by him without any objection and rebuttal.
14. That the complainant has already taken the physical possession of the subject unit on 10.04.2019 and executed a conveyance deed in his favour whereby taking physical possession of the subject unit after recording his full satisfaction towards the construction of the project especially the drawings, design and specification etc.
15. It is stated that it is a universally known fact that due to adverse market conditions viz. delay due to reinitiating of the existing work orders under GST regime, by virtue of which all



the bills of contractors were held between, delay due to various directions by the Hon'ble Supreme Court and National Green Tribunal whereby the construction activities were stopped, Non-availability of the water required for the construction of the project work & non-availability of drinking water for labour due to process change from issuance of HUDA slips for the water to totally online process with the formation of GMDA, shortage of labour, raw materials etc., which continued for around 22 months, starting from February'2015. Due to the above mentioned reasons, the project of the respondent was severely affected and it is in these above elaborated circumstances, beyond the control of the respondent and the progress and construction activities, sale of various flats and spaces has not taken place as envisaged.

16. Further, as per the license to develop the project, external development charges were paid to the State Government and in lieu of the EDCs was supposed to lay the whole infrastructure in the licensed area for providing the basic amenities such as drinking water, sewerage, drainage including storm water line, roads etc. and it failed to provide the basic amenities due to which the construction progress of the project was badly hit.
17. Furthermore, the Ministry of Environment and Forest (hereinafter referred to as the "MoEF") and the Ministry of Mines (hereinafter referred to as the "MoM") had imposed certain restrictions resulting in a drastic reduction in the

availability of bricks and availability of Kiln , the most basic ingredient in the construction activity. The MoEF restricted the excavation of top soil for the manufacture of bricks and further directed that no manufacturing of clay bricks or tiles or blocks can be done within a radius of 50 kilometres from coal and lignite based thermal power plants without mixing at least 25% of ash with soil. The shortage of bricks in the region and the resultant non-availability of raw materials required in the construction of the project also affected the timely schedule of construction of the project

18. That in view of the ruling by the Hon'ble Apex Court directing for suspension of all the mining operations in the Aravalli Hill range in State of Haryana within the area of approx.. 448 sq. kms in the district of Faridabad and Gurgaon including Mewat led to a situation of scarcity of the sand and other materials which derived the stone crushing activities , directly affecting the construction schedules and activities of the project.

E. Jurisdiction of the authority

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

E. I Territorial jurisdiction

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



the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject-matter jurisdiction

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

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the objections raised by the respondent.

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

19. The contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the apartment buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. The numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)** decided on 06.12.2017 which provides as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same



under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.....

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

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

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

21. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the

allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

G. Findings on the relief sought by the complainant.

Reliefs sought by the complainants: The complainant has sought following relief(s):

- i. Direct the respondent to pay interest to the complainant for delay in handing over of possession.
- ii. Direct the respondent to pay costs toward litigation incurred by the complainant
- iii. Direct the respondent to pay compensation to the complainant towards harassment, mental agony and instalment paid towards loan amount.

22. 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."

23. Clause 21 of the flat buyer's agreement provides for handing over of possession and is reproduced below:

" The Developer shall endeavor to complete the construction of the/said building/Unit within a period of three years, with an six months grace period thereon from the date of execution of the Flat Buyers Agreement subject to timely payment by the Buyer(s) of Total Sale Price payable according to the Payment Plan applicable to him or demanded by the Developer. The Developer on completion of the construction/development shall issue final call notice to the Buyer, who shall within 30 days thereof, remit all dues and take possession of the Unit. In the event of his/her failure to take possession of the Unit within the stipulated time for any reason whatsoever, he/she shall be liable to bear all taxes, levies, outflows and maintenance charges/ cost and any other levies on account of the allotted Unit along with interest and penalties on the delayed payment, from the dates these are levied/made applicable irrespective of the fact that the Buyer has not taken possession of the Unit or has not been enjoying benefit of the same. The Buyer in such an eventuality shall also be liable to pay the holding charges@ Rs.5per sq.ft (of the super area) per month to the Developer, from the date of expiry of said thirty days till the time possession is actually taken over by the Buyer."

24. At the inception, it is relevant to comment on the pre-set possession clause of the flat buyer's agreement wherein the possession has been subjected to innumerable terms and conditions, force majeure circumstances and innumerable terms and conditions. The drafting of this clause is not only



vague but so heavily loaded in favour of the promoters that even a single default by the allottee in fulfilling obligations, 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 buyer's agreement by the promoters 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.

25. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within a period of 3 years, with an six months grace period thereon from the date of execution of flat buyer agreement. In the present case, the date of execution of agreement is 22.06.2011. Therefore, the due date of handing over possession comes out to be 22.12.2014 including grace period. In the present complaint, the grace period is allowed being unqualified.
26. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the prescribed rate of interest on amount already paid by him. However, 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.

27. 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.
28. 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., 12.07.2022 is 7.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.70%.
29. 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—
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 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;”

30. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 9.70% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
31. On consideration of the documents available on record and submissions made by both the parties, 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 21 of the flat buyer's agreement executed between the parties on 22.06.2011, the possession of the subject unit was to be delivered within 3 years with six months grace period from the date of execution of agreement i.e., 22.06.2011. Therefore, the due date of handing over possession was 22.12.2014 including grace period. As far as grace period is concerned, the same is allowed for the reason being unqualified. Therefore, the due date of

handing over possession was 22.12.2014. The occupation certificate of the project has been received by the respondent on 23.07.2018 and the possession of the subject unit was offered to the complainant on 17.09.2018. The authority is of the considered view that there is delay on the part of the respondent to offer possession of the allotted unit to the complainant as per the terms and conditions of the flat buyer's agreement dated 22.06.2011 executed between the parties. It is the failure on the part of the promoter to fulfil its obligations and responsibilities as per the flat buyer's agreement to hand over the possession within the stipulated period.

32. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 23.07.2018. The respondent offered the possession of the unit in question to the complainant only on 17.09.2018. So, it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 month of reasonable time is being given to the complainant keeping in mind that even after intimation of possession, practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit, but this is subject to that the unit being handed over at the time of taking possession is in



habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 22.12.2014 till the expiry of 2 months from the date of offer of possession (17.09.2018) which comes out to be 17.11.2018.

33. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to delay possession at prescribed rate of interest i.e., 9.70% p.a. w.e.f. 22.12.2014 till 17.11.2018 as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19 (10) of the Act.

G-II Direct the respondent to pay costs toward litigation incurred by the complainant

G-III Direct the respondent to pay compensation to the complainant towards harassment, mental agony and instalment paid towards loan amount

34. The aforesaid relief no. 2 to 3 are taken together . The complainant is claiming compensation in the above-mentioned reliefs. For claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules

H. Directions of the authority

35. 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):

- i. The respondent is directed to pay interest at the prescribed rate of 9.70% p.a. for every month of delay from the due date of possession i.e., 22.12.2014 till the date of offer of possession i.e., 17.09.2018 + 2 months i.e., 17.11.2018 to the complainant as per section 19(10) of the Act.
 - ii. The arrears of such interest accrued from 22.12.2014 till 17.11.2018 shall be paid by the promoter to the allottees within a period of 90 days from date of this order as per rule 16(2) of the rules.
 - iii. The respondent shall not charge anything from the complainant which is not the part of the agreement. However, holding charges shall also not be charged by the promoter at any point of time even after being part of agreement as per law settled by the Hon'ble Supreme Court in civil appeal no. 3864-3889/2020 dated 14.12.2020.
36. Complaint stands disposed of.
37. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 12.07.2022