

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

Complaint no. : 3402 of 2020
First date of hearing : 19.11.2020
Date of decision : 27.09.2022

1.Mr.Ashok Sethi
2.Manju Sethi
both R/o: - A-52, Plot No.7, Sector-11
Seema Apartment, Dwarka
Delhi-110075

Complainants

Versus

M/s Solutrean Building Technologies Limited
Regd. office: N-1, Lower Ground Floor, Kailash
Colony, New Delhi-110048

Respondent

CORAM:	
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member

APPEARANCE:

Ms. Daggar Malhotra
Sh. Ashutosh Shukla

Advocates for the complainants
Advocate for the respondent

ORDER

1. The present complaint dated 12.10.2020 has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed

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

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name of the project	"Caladium". Village -Pawala Khusropur, Sector-109, Gurugram (Group housing project)
2.	Project Area	15.881 acres
3.	DTCP License no. and Validity Status	03.02.2017 dated 04.02.2011 valid till 03.02.2017
4.	Name of License	Chintels issued by DTCP Haryana
5.	RERA Registered/Not Registered	Not Registered
6.	Unit no.	B-102, 10th floor, Block-B [[As per page no. 19 of complaint]
7.	Unit area admeasuring	2430 sq. ft. [As per page no. 19 of complaint]
8.	Date of apartment buyer agreement	01.10.2011 [Page 16 of complaint]



9	Payment Plan	Construction linked Instalment payment plan [Page 48 of complaint]
10	Total Consideration	Rs.1,06,35,395/- (including taxes) [Page no.81 of complaint]
11.	Amount paid by the complainant	Rs.96,86,258/- (statement of account dated 04.12.2017 at page no. 81 of complaint) Rs. 92,48,740/- (as alleged by complainant in the relief sought)
8.	Possession clause	Due date of delivery of possession as per clause 11 of the space buyer agreement dated 01.10.2011 within 36 months with a grace period of six months from date of start of construction of a particular tower/building in which the registration for allotment is made.
9.	Due date of possession	01.04.2015 (Calculated from date of agreement as date of start of construction cannot be ascertained) <i>Grace period of 180 days is allowed being unqualified.</i>
10.	Occupation certificate	08.11.2017 (As per letter of offer of possession on page no. 79 of complaint)
11.	Offer of possession	05.12.2017 (page no. 79 of complaint)



B. Facts of the complaint

3. The complainants have made the following submissions in the complaint: -

- I. That the complainants booked a unit with the respondent and were allotted unit bearing no. b-102, block-b, 10th floor in the project i.e., "Caladium" at sector 109, Gurugram, Haryana.
- II. That in pursuant to allotment of the unit, an apartment buyer agreement was executed between the parties on 20.02.2012, the total cost of the unit was Rs.92,48, 740/- and the complainants have already paid an amount of an amount of Rs. 96, 18, 969/-till date in pursuant to that agreement.
- III. The possession of the allotted flat/unit was agreed to be given i.e., 3 years along with grace period of 6 months from date of execution of the builder buyer agreement.
- IV. That the respondent did not complete the construction of the project on time and therefore the possession was offered on dated 05.12.2017 i.e. after a delay of 3 years. The respondent also levied unlawful additional charges of EDC and others and failed to adequately resolve various concerns and queries of the complainants with respect to the unit, parking, maintenance charges, preferential location charges etc. The respondent never paid any heed to those concerns and ignored these issues on one pretext or another.

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- V. That the complainants also sought clarity with respect to preferential location charges as levied by the respondent. Whenever there have been any delayed payments, they have paid @24% interest without any protest or demur as and when raised by the respondent.
- VI. That the complainants on various dates have reminded the respondent to resolve the issues. However, the non-responsive attitude of the respondent has compelled, constrained and denied the complainants to take possession of their flat for which they have made 100% payments to it.
- VII. That even after a delay of 3 years till 2017, the complainants are unable to take possession of the unit due to the unlawful acts of the respondent. Due to the non-response attitude of the respondent, the delay has been further increased to 5 years and 7 months. These unlawful acts of the respondent compelled the complainants to file this present complaint before this Hon'ble Authority seeking possession of the unit besides delay possession charges.

c. Relief sought by the complainants

4. The complainants have sought following relief(s):
- (i) Direct the respondent to pay interest for delay on Rs. 92,48,740/-i.e., total paid amount @ prescribed rate of interest from 15-11-2014 i.e., the due date of possession as per flat buyers' agreement, till the date of actual

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handing over of the physical possession of the flat to the complainants.

(ii) Direct the respondent to withdraw its unlawful demands of additional charges on EDC and other misappropriations.

(iii) Direct the respondent to resolve all concerns of the complainants with respect to the allotment of parking, preferential location charges, maintenance charges etc.

5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions 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 by the respondent

6. The respondent has contested the complaint on the following grounds.

I. That the complainants have understood each and every term and condition for the purchase of apartment and only then they entered and executed an agreement i.e. apartment buyer agreement on 20.02.2012. The allegations of the complainants that the respondent levied unlawful additional charges which are not tenable in the eyes of law are without any substance.

II. That the complainants are trying to mislead the Hon'ble Authority by filing the false and frivolous complaint and raising hue and cry and failed to adequately resolve various concerns and also not handing over the

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possession of the allotted unit. However, the respondent has already been offered possession of the allotted unit in writing by way of letter on dated 05.12.2017. Hence, the present compliant is liable to be dismissed on this ground as well.

- III. That the respondent has not violated any provision of law and the terms and conditions of the apartment buyer agreement dated 20.02.2012. The complaint is wholly misconceived, groundless and unsustainable in law and is liable to be dismissed as such. The complainants were never denied to take possession of allotted unit and they have been offered possession of the unit by the respondent and also provided sufficient time as per agreed terms and conditions in apartment buyer agreement to clear the outstanding amount.
- IV. It was denied that the due date for completion of the project and handing over possession of the allotted unit to the complainants was fixed as 15.05.2014. Infact the time for possession of the allotted unit to be offered to the complainants was to be calculated from the date of actual start of construction of particular tower/building in which the unit was allotted.
- V. It was further pleaded that the after completion of the project, an occupation certificate of the same was received on 08.11.2017 and the complainants were offered possession of the allotted unit vide letter dated

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05.12.2017 asking them to take possession after clearing the dues.

- VI. It was denied that there was any delay on the part of the respondent to complete the project and offer possession of the allotted unit to the complainants or that they are entitled to any amount of compensation or delay possession charges as alleged.
- VII. All other averments made in the complaint were denied in toto.
- VIII. Copies of all the relevant do have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

7. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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.

8. 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

9. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the relief sought by the complainants

Relief sought by the complainants:

- Direct the respondent to pay interest for delay on Rs. 92,48,740/-i.e., total paid amount @ prescribed rate of interest from 15.11.2014 i.e., the due date of possession as per flat buyers' agreement, till the date of actual handing over of the physical possession of the flat to the complainants.
10. The complainants intend to continue with the project and are 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."

11. Clause 11 of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

"11. POSSESSION.

Time of handing over the possession.

Barring unforeseen circumstances and force majeure events as stipulated hereunder, the possession of the said apartment is proposed to be delivered by the company to the allottee within 36 months (three years) with a grace period of six months (hereinafter referred to as "the Stipulated Date") from the date of actual start of the construction of a particular tower building in which the registration for allotment is made, subject always to timely payment of all charges including the basic sale price, stamp duty, registration fees and other charges as stipulated herein or as may be demanded by the company from time to time in this regard. The date of actual start of construction shall be the date on which the foundation of the particular building in which the said apartment is allotted shall be laid as per certification by the company's architect/engineer-in-charge of the complex and the said certification shall be final and binding on the allottee."

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12. The authority has gone through the possession clause of the agreement and observes that this is a matter very rare in nature where builder has specifically mentioned the date of handing over possession rather than specifying period from some specific happening of an event such as signing of apartment buyer agreement, commencement of construction, approval of building plan etc. This is a welcome step, and the authority appreciates such firm commitment by the promoter regarding handing over of possession but subject to observations of the authority given below.
13. At the outset, it is relevant to comment on the preset 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 provision of these agreements 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 buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and

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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.

14. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 36 (thirty-six) months from the date of actual start of the construction and further provided in agreement that the promoter shall be entitled to a grace period of six months for force majeure events. The period of 36 months expired on 01.10.2015. There is no material evidence on record to show that the respondent has completed the said project within stipulated time given under the possession clause and also there is no document available which show the date of construction. But the authority observes that the grace period is allowed being unqualified.
15. **Payment 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]

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(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%.

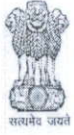
Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

16. 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.
17. 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., 27.09.2022 is 8%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10% prevalent at that time.
18. 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;"*

19. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.

F.II Direct the respondent to withdraw its unlawful demands of additional charges on EDC and other misappropriations

20. The complainants have not specified any particular details of EDC charges. The promoter would be entitled to recover the actual charges paid to the concerned departments from the complainant/allottees on pro-rata basis on account of electricity connection, sewerage connection and water connection, etc., i.e., depending upon the area of the flat allotted to them vis-à-vis the area of all the flats in this particular project. The complainants would also be entitled to proof of such payments to the concerned departments along with a computation proportionate to the allotted unit, before making payments under the aforesaid heads. The respondent is directed to provide specific details with regards to this charge.

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F.III Direct the respondent to resolve all concerns of the complainants with respect to the allotment of parking, PLC, maintenance charges etc

21. The complainants have not specified any particular details of allotment of parking, PLC, maintenance charges etc. However, the respondent is directed not to charge anything from them which is not part of apartment buyer's agreement

G. Directions of authority

22. 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 10% p.a. for every month of delay on the amount paid by them to the respondent from the due date of possession i.e., 01.04.2015 till offer of possession i.e. 05.12.2017 plus 2 months i.e. 05.02.2018 to the complainant(s) as per section 19(10) of the Act.
- II. The arrears of such interest accrued from 01.05.2015 till the date of order by the authority shall be paid by the promoter to the allottees within a period of 90 days from date of this order.
- III. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

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IV. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10% 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 delayed possession charges as per section 2(z) of the Act.

V. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement. The respondent is not entitled to charge holding charges from the complainant/allottees at any point of time even after being part of apartment buyer's agreement as per law settled by hon'ble Supreme Court in civil appeal no. 3864-3899/2020 decided on 14.12.2020.


23. Complaint stands disposed of.

24. Detailed order will follow.

25. File be consigned to registry.


(Sanjeev Kumar)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

27.09.2022