

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

Complaint no.	:	3340 of 2021
Date of filing complaint	:	26.08.2021
First date of hearing	:	28.10.2021
Date of decision	:	07.09.2022

Ishan Madan R/o: H. No. G-482, Palam Vihar, Gurugram-122001	Complainant
Versus	
Lotus Realtech Pvt. Ltd. Regd. office: 501, Block-C , Nirvana Courtyard , Gurugram-122018	Respondent

CORAM:

Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member

APPEARANCE:

Shri . Amit Jaglan(Advocate)	Complainant
Shri.Sonu clerk of Advocate	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 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 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	"Lotus Homz", Sector 111, Gurugram, Haryana
2.	Project area	5.09 Acres
3.	Nature of the project	Affordable Group Housing
4.	DTCP license no. and validity status	47 of 2014 dated 18.06.2014
5.	Name of licensee	Ashok Kumar and 1 other
6.	RERA Registered/ not registered	Registered vide no. 214 of 2017 Dated 18.09.2017
7.	Unit no.	106,1 st floor, Tower/ block-J (Page no. 18 of complaint)
8.	Unit area admeasuring	Carpet Area- 605.55 sq. ft. (Page no. 20 of complaint)
9.	Date of approval of building plans	18.06.2014 (As per on page 31 of reply)

10.	Date of environment clearance	01.07.2016 (As per on page 10 of reply)
11.	Date of execution of agreement to sell	Not mentioned
12.	Possession clause	3.1 Possession The developer proposes to offer possession of the said apartment to the allottee within a period of 4 years from the date of approval of building plans or grant of environment clearance, whichever is later. (As per affordable policy,2013).
16.	Due date of possession	01.01.2021 01.07.2020 + 6 months (covid extension) (Calculated from the date of environment clearance)
17.	Total sale consideration	Rs.24,67,375/- (As per on page 9 of reply)
18.	Amount paid by the complainant	Rs. 26,009,55/- (As alleged by the complainant in facts on page 14 of complaint)
19.	Occupation certificate /Completion certificate	01.06.2021 (As per DTCP site)
20.	Offer of possession	07.06.2021 (As per on page 35 of complaint)

22.	Grace period	Allowed
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B. Facts of the complaint:

3. The complainant through a draw conducted by the high-power committee vide allotment dated 01.12.2015 was allotted a unit in the project namely "Lotus Homz", Sector 111, Gurugram, Haryana. A unit bearing no. 106,1st floor, tower/block-J measuring 605.55 sq. ft. was allotted to him for total sale consideration of Rs. 24,67,375/-.
4. It is pertinent to mention that no builder buyer agreement was executed between the parties. Hence, the due date of possession has been calculated according to the affordable policy, 2013 i.e. 01.01.2021.
5. The complainant paid a total sum of Rs.26,00,955/- and the possession was offered to the complainant dated 07.06.2021. The complainant time and again visited the office of the respondent and requested it to hand over the physical possession of the flat retaining since long without having any authority and to pay the compensation for the delay in giving possession for the total period till the possession is delivered and the same is continuing,
6. That the respondent-company has withheld the hard-earned money of the complainant for its benefit and has used the money for the own purpose and did not invest the money in the completion of the project for which the complainant was duped to pay.

C. Relief sought by the complainant:

7. The complainant has sought following relief(s):

- (i) To direct the respondent to handover physical possession of the flat.
- (ii) To direct the respondent to pay interest for every month of delay.
- (iii) To direct the respondent not to charge any interest charges or GST interest charges from the complainant at the time of handing over the possession of the flat.

D. Reply by the respondent

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

- i. That the complainant has concealed the material facts from the authority. The complainant after going through all the pros and cons, booked a flat in December 2015, 106,1st floor, Tower/ block-J in the project of the respondent.
- ii. That the relief sought by the complainant from this authority is not tenable in the eyes of law, as the delay in delivery of project is due to the force majeure circumstances beyond its control. The reasons attributable for delay in delivery of possession is mentioned herein under: -
 - a. Due to sudden stoppage of the construction work, site staff, contractors, construction labour and machinery involved in construction work became idle. Once the construction work at site is stopped then it takes at least one to two months to start and gearup the work to achieve the stage on which, it was stopped. That

due to the COVID-19 pandemic, the nationwide lockdown was imposed by the Government of India from 25.03.2020. During the lockdown, a large number of labour moved to their native villages/home town from the NCR. In view of the situation, the Govt. of India *suo moto* extended the construction period of all projects by 9 months due to COVID 19 pandemic. After the unlock, time to time declared by the Govt., the Respondent started the construction activities at the project with few labour and material under the guidelines of the Government.

- iii. The respondent has completed the project as per the terms & conditions of the BBA and even offered the possession to the complainant on 07.06.2021. But instead of taking the possession, he filed a complaint out of greed on false grounds which is not maintainable.
- iv. All averments were denied in toto.
- v. Copies of all relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.1 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)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 allottee 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 of 2016 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 relief sought by the complainant

Relief sought by the complainant:

F.I Direct the respondent to immediately handover the possession of apartment and to give interest for every month of delay with interest.

12. The respondent / builder has offered the possession of the allotted unit on 07.06.2021 after obtaining the occupation certificate. The complainant is directed to fulfil the obligation conferred upon him as per section 19(10) of Act. Therefore, the complainant is directed to take the possession within 30 days of date of this order.

13. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges 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.

14. 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.

15. 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;"*

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

17. 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 3.1 of the BBA executed between the parties on 09.02.2016, the possession of the subject apartment was to be delivered within a period of 4 years from the date of approval of building plans or grant of environment clearance,

whichever is later. The due date of possession is calculated from the date of environment clearance i.e.; 01.07.2016 plus 6 months for covid, which comes out to be 01.01.2021.

18. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the affordable policy, 2013 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., 01.01.2021 till the date of actual handing over of possession or till offer of possession plus 2 months, whichever is earlier; at the prescribed rate i.e., 10 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

F.II Direct the respondent not to charge any interest charges or GST interest charges from the complainant at the time of handing over the possession of the flat.

19. 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 it 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 complainant/allottee as the liability of that charge had not become due up to the due date of possession as per the buyer's agreements.
20. In the present complaint, the possession of the subject unit was required to be delivered by 01.01.2021 and the incidence of GST came

into operation on 01.07.2017. So, the respondent/promoter is entitled to charge GST from the complainant.

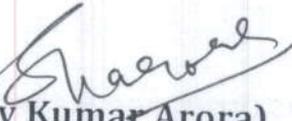
H. Directions of the authority

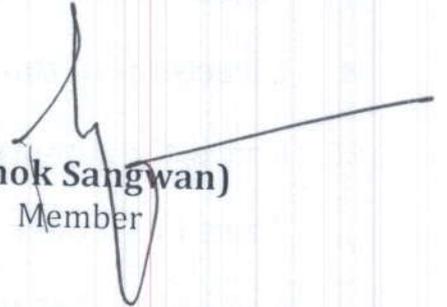
21. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent shall pay interest at the prescribed rate i.e., 10% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e.; 01.01.2021 till the date of actual handing over of possession or till offer of possession plus 2 months after obtaining occupation certificate, whichever is earlier; as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- ii. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.
- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 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(za) of the Act.

22. Complaint stands disposed of.

23. File be consigned to registry.


(Sanjeev Kumar Arora)
Member

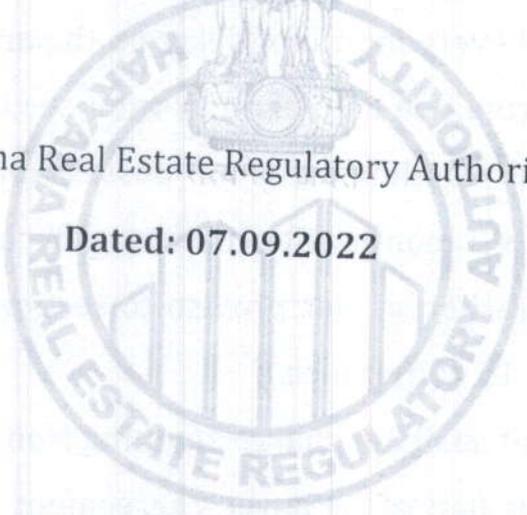

(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member


(Dr. KK Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.09.2022


HARERA
GURUGRAM