

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

Complaint no. : 3796 of 2020
Date of filing complaint : 24.09.2021
First date of hearing : 09.11.2021
Date of decision : 07.09.2022

Arvinder Kohli R/O: - 64 L, New colony, Gurugram	Complainant
Versus	
V.K Motors Pvt. Ltd. Regd. Office at: - Global Hill View, Sector 11, Main Gurugram Alwar road, Sohna, Gurugram	Respondent

CORAM:	
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Arvinder Kohli	Complainant in person
Mrs. Sonali Joon	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 provisions 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.no.	Heads	Information
1.	Project name and location	'Global Hill View', Sector 11, Sohna, District Gurugram, Haryana.
2.	Project area	5.4125 Acres
3.	Nature of the project	Affordable Group Housing Colony
	DTCP license no.	26 of 2014 dated 11.06.2014
	License valid up to	20.07.2021
	Name of the licensee	Sh. Dharamvir Singh
4.	RERA registered/not registered	Not registered
5.	Unit no.	T2-1405, in block/ tower -2 (As per on page 30 of complaint)
6.	Unit admeasuring	585.41sq. ft. (As per on page no. 30 of complaint)
7.	Date of execution of the flat buyer's agreement	02.07.2018 (As per on page no. 28 of complaint)
8.	Allotment Letter	16.02.2018 (As per on page no. 27 of complaint)

9.	Environment Clearance	21.07.2017 (As per on page 4 of reply)
10.	Building Plan	10.03.2017 (As per on page 30 of complaint)
11.	Tripartite Agreement	Date not mentioned
12.	Total consideration	Rs. 21,57,031/- (On page no. 14 of reply)
13.	Total amount paid by the complainant	Rs.17,73,690/- (As alleged by the complainant on page no.4 of the complaint but the same has not been placed on record)
14.	Possession clause	"Clause 3.1 The promoter shall offer possession of the said flat 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.
15.	Due date of delivery of possession	21.07.21 (Calculated from the date of environment clearance)
16.	Occupation certificate	11.05.2021
17.	Offer of possession	08.06.2021 (As per on page 15 of complaint)

B. Facts of the complaint

3. That a project by the name of "Global Hill View" under the affordable group housing policy, 2013 situated at Sector 11, Sohna, District Gurugram was being developed by the respondent. The complainant applied for a unit in that project. An apartment bearing no. T-2-1405 in block 2 having a carpet area of 585.41 sq. ft. and balcony area of 99.11 sq. ft. at 14th Floor was allotted to

him for a total sale consideration of Rs.21,57,031/- vide letter of allotment dated 16.02.2018. An apartment buyer's agreement dated 02.07.2018 was executed between the parties with regard to the allotted unit.

4. The complainant started making payments against the allotted unit and paid a sum of Rs.17,73,690/- in all.
5. That the due date of possession for completion of the project and offer of possession of the allotted unit was fixed as 21.07.2021.
6. It is the case of the complainant that due to delay in disbursement of the amount, he could pay the amount due leading to charge of interest against the instalments. Otherwise, there was no delay in payment of the amount due.
7. It is further his case that though the possession of the unit was to be offered in November/December 2020 but the same was offered in June 2021. An email in this regard was received.
8. So, on these broad averments, he sought waiver of interest on delayed payments and seeking possession of the allotted unit with delay possession charges.

C. Relief sought by the complainant.

9. The complainant has sought following relief:
 - (i) To direct the respondent to pay interest for every month of delay at prevailing rate of interest.
 - (ii) To wave off interest on delayed payment, waive off holding charges and provide delayed possession charges.

D. Reply by the respondent.

The respondent by way of written reply dated 02.11.2021 made the following submissions:

10. The complainant is an allottee of the respondent of the subject unit and the same was allotted to him after draw of lots on 16.02.2018. It led to execution to apartment buyer's agreement between the parties on 02.07.2018.
11. That since the complainant was unable to pay the amount due against the allotted unit, so he made an enquiry in this regard from the respondent and was suggested India bulls, a financial institution for loan. However, the complainant took loan in his individual capacity and was required to pay the amount due after raising funds.
12. That since the complainant was not able to pay the amount due as per the installments, so he was asked to pay that amount with interest. It was denied that there any liability of the respondent to get arranged the funds to be paid by way of instalments. It was denied that the interest charged on the amount due is against the policy of 2013 and is illegal.
13. It was further pleaded that from time to time, the complainant used to be informed about the status of the project and reminders with regard to remaining payments used to be issued.
14. It was also pleaded that after completion of the project, the respondent received occupation certificate and offered

possession of the allotted unit to the complainant on 08.06.2021. It was denied that there was any delay in completion of the project and the complainant is entitled to delayed possession charges from the respondent in any manner. Thus, the complaint filed by him before the Authority is not maintainable.

15. 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 on the basis of these undisputed documents.

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 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 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.

16. It is pleaded on behalf of respondent that after the subject unit was allotted to the complainant on 16.02.2018 under the policy of 2013, he was required to make timely payments. Since, he was not regular in making payments, so the respondent sent a number of reminders, but he failed to clear the dues. The respondent completed the project from its own funds and offered possession to the complainant. No doubt, as per the policy of 2013 and apartment buyer's agreement, the complainant was to pay a total

sum of Rs. 21,57,031/- to the respondent but he paid only a sum of Rs.17,73,690/- and failed to make payment of the remaining amount. The possession of the allotted unit was to be offered to the complainant within four years of approval of building plans or environment clearance and which comes to 21.07.2021(the dates of environment clearance are 21.07.2017 and of building plans approval as 10.03.2017). Though, the complainant is in default but there is nothing on record to show that any reminder whatsoever was issued to him for making payment of amount due. Even, the respondent did not cancel the allotment of the unit due to default in making payments of the amount due as per clause 2.6 of the Apartment Buyer's Agreement. So, the plea of the respondent taken in this regard is not maintainable though it is entitled to claim interest for delayed payments made by the complainant against the allotted unit as per section 2 (za) of Act of 2016.

G. Findings on the relief sought by the complainant.

The complainant has sought the following relief:

G.I Direct the respondent to offer possession of the flat to the complainant with delay interest from the date of possession at the prescribed rate as per the Act, 2016.

- A ✓ 17. 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."

3.1. POSSESSION

Subject to force majeure circumstances, intervention Statutory Authorities, receipt of occupation certificate and Allottee/Buyer having timely complied with all its obligations, formalities, or documentation, as prescribed by the Developer and not being in default under any part hereof and Flat Buyer's Agreement, including but not limited to the timely payment of installments of the other charges as per payment plan, Stamp Duty and registration charges, the Developers Proposes to offer possession of the said Flat to the Allottee/Buyer within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "Commencement Date"), whichever is later. The Developer also agrees to compensate the Allottee/Buyer @ Rs.5.00/- (Five rupees only) per sq. ft. of the area of the flat per month for any delay in handing over possession of the Flat beyond the given promised period plus the grace period of 6 months and upto offer letter of possession or actual physical possession whichever is earlier".

18. As per clause 3.1, the promoter shall offer possession of the said flat 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. Hence, the possession of the unit was to be offered on 21.07.2021.

19. Upon perusal of documents on record it is observed that the respondent has already offered the possession of the allotted unit

vide letter dated 08.06.2021 i.e. before due date of handing over of possession. The said offer of possession was made after obtaining occupation certificate from competent authority on 11.05.2021.

20. Hence, the authority is of considered view that there was no delay on part of the respondent as it has already offered the possession of the allotted unit before due date of handing over of possession and is not in violation of section 11(4)(b) and thus, the complainant is not entitled to any delay possession charges. The complainant was to pay a total sum of Rs. 21,57,031/- to the respondent but he paid only a sum of Rs.17,73,690/- and failed to make payment of the remaining amount.
21. 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.
22. 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., 07.09.2022 is 8%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10%.
23. The definition of term 'interest' as defined under section 2(z a) 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;”

24. Therefore, the complainant is directed to fulfil the obligations conferred upon him under section 19(6) & (7) of Act of 2016 and make payment of due installments towards consideration of allotted unit.

H. Directions of the authority

- i. The complainant is directed to fulfil the obligation conferred upon him under section 19(6) & (7) of Act of 2016 and make payment of due installments towards consideration of allotted unit.
- ii. 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.



- iii. The respondent shall not charge anything from the complaint which is not a part of buyer's agreement dated 02.07.2018 and except in the manner as prescribed in this order.
- iv. The holding charges shall not be recoverable from the allottees even being part of builder buyer agreement as per the directions of the Hon'ble Supreme Court in civil appeal nos. 3864-3899/2020 decided on 14.12.2020.
25. Complaint stands disposed of.
26. File be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.09.2022

HARERA
GURUGRAM