

corrected vide order dated 11.10.2022

10.11.2022



Complaint no. 3683 of 2020

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

Complaint no. : 3683 of 2020
First date of hearing: 22.12.2020
Date of decision : 11.02.2021

Shri Satdev Singh Dahiya

R/o:- H. NO. 2646, Near Palm Tree Hotel, Ashok
Vihar Phase 3, Gurugram-122001

Complainant

Versus

~~M/s Vatika Ltd.~~

~~M/s Vatika Seven Elements Pvt. Ltd.~~

Regd. office: Vatika triangle, 4th floor, Sushant
Lok, Ph-1, Block-A, Mehrauli-Gurugram Road,
Gurugram 122002

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Shri Abhay Jain & Yogesh
Kulhore

Advocates for the complainant

Shri Venket Rao

Advocate for the respondent

ORDER

1. The present complaint dated 17.11.2020 has been filed by the complainant/allottees in Form CRA 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 to the allottee as per the agreement for sale executed inter-se them.

A. Unit and project related details

2. The particulars of the project, the details of 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.	Name and location of the project	"Sovereign Next", Sector 82A, Gurugram
2.	Nature of the project	Group Housing Colony
3.	DTCP Licence	<ul style="list-style-type: none"> • 113 of 2008 dated 01.06.2008 • 71 of 2010 dated 15.09.2010 • 62 of 2011 dated 02.07.2011 • 76 of 2011 dated 07.09.2011
4.	Valid up to	<ul style="list-style-type: none"> • 31.05.2018 • 14.09.2018 • 01.07.2024 • 06.09.2017
5.	Licence holder	<ul style="list-style-type: none"> • Browz Technologies Pvt. Ltd. and others • Blossom Properties Pvt. Ltd. and others



		<ul style="list-style-type: none">• Calida Developers Pvt. Ltd. and others• Spring Buildcon Pvt. Ltd. and others
6.	HARERA Registration	280 of 20017 dated 09.10.2017 (Phase I)
7.	Registration valid up to	31.03.2021
8.	Area registered	34519.201 sq. mts.
9.	Date of execution of apartment buyer's agreement	08.01.2013
10.	Unit no.	301, 3rd floor, Tower-E
11.	Area	3270 sq. ft.
12.	Total consideration	Rs. 2,02,76,805/- (As per SOA dated 05.10.2016 at page no. 28 of the complaint)
13.	Total amount paid by the complainant	Rs. 1,80,27,003/- (As per SOA dated 05.10.2016 at page no. 28 of the complaint)
14.	Due date of delivery of possession (14. SCHEDULE FOR POSSESSION OF THE SAID APARTMENT) <i>The Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/ said</i>	08.01.2016



	<i>Apartment within a period of 3(Three) years from the date of execution of this Agreement unless there shall be delay or there....)</i>	
15.	Specific reliefs sought	Direct to handover the physical possession of the subject apartment along with the interest for delayed period of interest.

B. Facts of the complaint

3. The complainant submitted that on the basis of the licences, the respondent has collected a huge amount from gullible and naïve buyers including the complainant from January 2012 to September 2016 and promised the complainant to hand over the possession of the apartment by 8th January, 2016 as per the apartment buyer's agreement.
4. The complainant has submitted that he paid, as and when demanded by the respondent, all instalments in time and thereby paid a total of Rs. 1,80,27,003/- (One Crore Eighty Lakh Twenty-Seven Thousand and Three) for the apartment which is more than 90% (ninety per cent) of the total cost of the apartment. The

statement of account dated 5th October 2016 may be referred, as it shows the total payment made by the complainant.

5. The complainant submitted that he approached the respondent and pleaded for delivery of possession of his apartment as per the Apartment Buyer's agreement on various occasions. The Respondent did not reply to his letters, emails, personal visits, telephones calls, seeking information about the status of the project and delivery of possession of his Apartment, thereby the Respondent violated Section 19 of the Act, 2016.
6. The complainant submitted that the Respondent has in an unfair manner siphoned of funds meant for the project and utilised same for its own benefit for no cost. The Respondent being builder, promoter, colonizer and developer whenever in need of funds from bankers or investors ordinarily has to pay a heavy interest per annum. However, in the present scenario the Respondent utilised funds collected from the Complainant and other buyers for its own good in other projects, being developed by the Respondent.

C. Relief sought by the complainant:

7. The complainant has sought following relief(s).
 - i. Direct the respondent to complete the construction of the apartment along with common area facilities and amenities



like club, car parking slot, parks, etc. immediately and handover the legal and rightful possession of the apartment to the complainant.

- ii. Direct the respondent to pay interest for every month of delay in offering the possession of the apartment since 8th January, 2016 to the complainant, on the amount taken from the complainant for the sale consideration amount for the aforesaid apartment with interest at the prescribed rate as per the Act, 2016 till the respondent hands over the legal and rightful possession of the apartment to the complainant.

8. On the date of hearing, the authority explained to the respondent/promoter about the contravention 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

9. The respondent has contended on the following grounds: -
 - a. That the present complaint, filed by the Complainants, is bundle of lies and hence liable to be dismissed as it is filed without cause of action.
 - b. That the present complaint is an abuse of the process of this Hon'ble authority and is not maintainable. The complainants

are trying to suppress material facts relevant to the matter. The complainant is making false, misleading, frivolous, baseless, unsubstantiated allegations against the respondent with malicious intent and sole purpose of extracting unlawful gains from the respondent.

c. That the Respondent had from the very beginning portrayed the real story and had throughout updated the allottees regarding the status of the project. The respondent had intension to complete the project and handover the same within the schedule of possession but unfortunately the project got delayed due to the reasons beyond the control of the Respondent. The prime reasons for delayed possession are:

- a) Construction, laying down and or re-routing of Chainsa-Gurgaon-Jhajjar-Hissar Gas Pipeline by Gas Authority of India Limited (Gail) for supplying natural gas and the consequent litigation for the same, due to which the company was forced to change its building plans, project drawing, green areas, laying down of the connecting roads and complete lay out of the Township, including that of Independent Floors.
- b) Non acquisition of land by Haryana Urban Development authority (HUDA) to lay down of sector roads 75mtr and 60

Mtrs wide and the consequent litigation for the same, the issue is even yet not settled completely:

- c) Labour issue, disruption/delays in supply of stone aggregate and sand due to court orders of the courts, unusually heavy rains, delay in supply of cement and steel, declaration of rains, delay in supply of cement and settle, declaration of Gurgaon as 'Notified Area' for the purpose of Ground Water,
- d) Delay in removal/ re-routing of defined High-Tension Line of 66KVA in Licenses Land, despite deposition of charges/ fee with HVBPNL, Haryana.
- e) Total and partial Ban on construction due to the directive's issues by the National Green Tribunal during various times since 2015.
- f) The national Green Tribunal (NGT)/ Environment pollution control Authority (EPCA) issues directives and measures (GRAP) to counter the deterioration in Air quality in Delhi-NCR region especially during the winter months over the last few years. Among various measures NGT, EPCA, HSPCB and Hon'ble Supreme court imposed a complete ban on construction activities for a total of 70days over various periods from November 2015 to December 2019.

- g) Additionally, it imposed a set of partial restrictions, some of which are
- I) No construction activities between 6 pm till 6am (174 days)
 - II) Stop the usage of diesel generator sets (128 days)
 - III) Stop entry of truck traffic into Delhi.
 - IV) Close brick kilns, Hot Mix plants and stone crushers.
 - V) Stringently enforced rules for dust control in construction activities and close non-complaint sites.
 - VI) This year, partial restrictions continued to be in place in NCR region.
- h) The several stretches of total and partial; construction restrictions have led to significant loss of productivity in construction of our projects. We have also suffered from demobilization of the labour working on the projects, and it took several additional weeks to resume the construction activities with the required momentum.
- d. That the complaint is devoid of merits and should be dismissed with costs.

10. The copies of all the relevant document have failed and place on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of their undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

11. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in *Simmi Sikka v/s M/s EMAAR MGF Land Ltd. (complaint no. 7 of 2018)* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage. The said decision of the authority has been upheld by the Haryana Real Estate Appellate Tribunal in its judgement dated 03.11.2020, in appeal nos. 52 & 64 of 2018 titled as *Emaar MGF Land Ltd. V. Simmi Sikka and Anr.*
12. The Authority on the basis of information and explanation and other submissions made and the documents filed by the complainant and the respondent is of considered view that there is no need of further hearing in the complaint.

F. Finding on the relief sought by the complainant

Relief sought by the complainant: The respondent be directed to immediately grant the possession of unit along with compensation for the delay caused herein to the complainant.

13. In the present complaint, the complainants intend 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."

14. As per clause 14 of builder buyer agreement, the possession was handed over within a period of 3 years from the date of execution of this agreement. Clause 14 of the builder buyer agreement is reproduced below:

Schedule for possession of the said apartment

The developer based on its present plans and estimates and subject to all just exceptions contemplates to complete construction of the said building/ said apartment within a period of 48 months from the date of execution of this agreement unless there shall be delay or there shall be failure due to reasons mentions in clauses 14 to 17 & 37 or due to failure of allottee(s) to pay in time the price of the said apartment along with all other charges and dues in accordance with the schedule of payments given in annexure I or as per the demands raised by the developer from time to time or any failure on the part of the allottee(s) to abide by ant of the terms or conditions of this agreement.

15. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the rate of 18% p.a. however, 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.

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. 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 home 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."

17. On consideration of the circumstances, the evidence and other record and submissions made by the complainant and the respondent and based on the findings of the Authority regarding contravention as per provisions of Act, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 14 of the apartment buyer's agreement executed between the parties on 08.01.2013, possession of the booked unit was to be delivered within a period of 3 years from the date of signing of the agreement which comes out to be 08.01.2016.
18. Since, the respondent has not offered the possession of the subject unit to the complainant till now, accordingly, it is the failure of the

promoter to fulfil his obligations, responsibilities as per the apartment buyer's agreement dated 08.01.2013 to hand over the possession within the stipulated period.


19. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) of the Act on the part of the respondent is established. As such the complainant is entitled for delayed possession charges @9.30% p.a. w.e.f. 08.01.2016 till the date of handing over of possession, as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

F. Direction of the authority

20. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:
- i. The respondent shall pay the interest at the prescribed rate i.e. 9.30% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 08.01.2016 till the date of handing over of possession.
 - ii. The arrears of interest accrued till date of decision shall be paid to the complainant within a period of 90 days from the date of this order and thereafter monthly payment of



- interest till the date of handing over of possession shall be paid on or before 10th of each subsequent month.
- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The respondent shall not charge anything from the complainant which is not part of the apartment buyer's agreement.
- v. Interest on the delay payments from the complainant shall be charged at the prescribed rate of interest @9.30% p.a. by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.
21. Complaint stands disposed of.
22. File be consigned to registry.


(Dr. K.K. Khandelwal)

Chairman


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.02.2021

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AUTHORITY, GURUGRAM**

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APPEARANCE:

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	<i>Apartment within a period of 3(Three) years from the date of execution of this Agreement unless there shall be delay or there....)</i>	
15.	Specific reliefs sought	Direct to handover the physical possession of the subject apartment along with the interest for delayed period of interest.

B. Facts of the complaint

3. The complainant submitted that on the basis of the licences, the respondent has collected a huge amount from gullible and naïve buyers including the complainant from January 2012 to September 2016 and promised the complainant to hand over the possession of the apartment by 8th January, 2016 as per the apartment buyer's agreement.
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C. Relief sought by the complainant:

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like club, car parking slot, parks, etc. immediately and handover the legal and rightful possession of the apartment to the complainant.

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8. On the date of hearing, the authority explained to the respondent/promoter about the contravention 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

9. The respondent has contended on the following grounds: -
 - a. That the present complaint, filed by the Complainants, is bundle of lies and hence liable to be dismissed as it is filed without cause of action.
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are trying to suppress material facts relevant to the matter. The complainant is making false, misleading, frivolous, baseless, unsubstantiated allegations against the respondent with malicious intent and sole purpose of extracting unlawful gains from the respondent.

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Mtrs wide and the consequent litigation for the same, the issue is even yet not settled completely:

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- e) Total and partial Ban on construction due to the directive's issues by the National Green Tribunal during various times since 2015.
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 - VI) This year, partial restrictions continued to be in place in NCR region.
- h) The several stretches of total and partial; construction restrictions have led to significant loss of productivity in construction of our projects. We have also suffered from demobilization of the labour working on the projects, and it took several additional weeks to resume the construction activities with the required momentum.
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12. The Authority on the basis of information and explanation and other submissions made and the documents filed by the complainant and the respondent is of considered view that there is no need of further hearing in the complaint.

F. Finding on the relief sought by the complainant

Relief sought by the complainant: The respondent be directed to immediately grant the possession of unit along with compensation for the delay caused herein to the complainant.

13. In the present complaint, the complainants intend 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."

14. As per clause 14 of builder buyer agreement, the possession was handed over within a period of 3 years from the date of execution of this agreement. Clause 14 of the builder buyer agreement is reproduced below:

Schedule for possession of the said apartment

The developer based on its present plans and estimates and subject to all just exceptions contemplates to complete construction of the said building/ said apartment within a period of 48 months from the date of execution of this agreement unless there shall be delay or there shall be failure due to reasons mentions in clauses 14 to 17 & 37 or due to failure of allottee(s) to pay in time the price of the said apartment along with all other charges and dues in accordance with the schedule of payments given in annexure I or as per the demands raised by the developer from time to time or any failure on the part of the allottee(s) to abide by ant of the terms or conditions of this agreement.

15. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the rate of 18% p.a. 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.

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. 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 home 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."

17. On consideration of the circumstances, the evidence and other record and submissions made by the complainant and the respondent and based on the findings of the Authority regarding contravention as per provisions of Act, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 14 of the apartment buyer's agreement executed between the parties on 08.01.2013, possession of the booked unit was to be delivered within a period of 3 years from the date of signing of the agreement which comes out to be 08.01.2016.
18. Since, the respondent has not offered the possession of the subject unit to the complainant till now, accordingly, it is the failure of the

promoter to fulfil his obligations, responsibilities as per the apartment buyer's agreement dated 08.01.2013 to hand over the possession within the stipulated period.

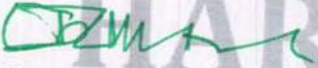
19. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) of the Act on the part of the respondent is established. As such the complainant is entitled for delayed possession charges @9.30% p.a. w.e.f. 08.01.2016 till the date of handing over of possession, as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

F. Direction of the authority

20. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:

- i. The respondent shall pay the interest at the prescribed rate i.e. 9.30% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 08.01.2016 till the date of handing over of possession.
- ii. The arrears of interest accrued till date of decision shall be paid to the complainant within a period of 90 days from the date of this order and thereafter monthly payment of

- interest till the date of handing over of possession shall be paid on or before 10th of each subsequent month.
- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iv. The respondent shall not charge anything from the complainant which is not part of the apartment buyer's agreement.
 - v. Interest on the delay payments from the complainant shall be charged at the prescribed rate of interest @9.30% p.a. by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.
21. Complaint stands disposed of.
 22. File be consigned to registry.


(Dr. K.K. Khandelwal)
Chairman


(Samir Kumar)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 11.02.2021

Judgement uploaded on 12.07.2021