

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

Complaint no. :	3821 of 2021
Date of filing complaint:	14.10.2021
First date of hearing:	10.12.2021
Date of decision :	06.10.2022

1. Santosh Kumar Pandey
2. Seema Pandey
R/O for both: Flat no. F704, Sujjan Vihar AWHO,
GH-4, Sector-43, Gurugram

Complainants

Versus

M/s Wonder city Buildcon Private Limited
Regd. office: Godrej One, 5th floor, Pirojshanagar,
Eastern Express Highway, Vikhroli, Mumbai-
4000079

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Member
Member
Member

APPEARANCE:

Sh. Abhishek Tripathi (Advocate)
Sh. Amrita Tonk(Advocate)

Complainants
Respondent

ORDER

1. The present complaint has been filed by the complainants/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

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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 the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	"Godrej-101", Sector 79, Gurgaon
2.	Nature of the project	Group housing residential project
2.	RERA registered/ not registered	Registered vide no. 61 of 2017 dated 17.08.2017
3.	Unit no.	A-0005, Ground floor, Godrej 101 tower A (Pg. 39 of complaint)
4.	Carpet area	1053.9 sq. ft. (Pg. 83 of complaint)
10.	Letter of allotment	24.02.2016 (Pg. 39 of the complaint)
11.	Possession clause	4.2 Possession time and compensation The developer shall endeavour to complete the construction of the apartment and to initiate possession of apartment within 48 months from date of issue of allotment letter along with a grace period of 12 months over and above this period. (Pg. 94 of the complaint)
12.	Due date of possession	24.02.2021

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		(Calculated from the allotment letter i.e., 24.02.2016 + 12 months grace period allowed being unqualified)
13.	Total sale consideration as per SOA dated 27.08.2021 at pg. 179 of complaint	₹ 1,10,44,323/-
14.	Amount paid by the complainants as per SOA dated 27.08.2021 at pg. 179 of complaint	₹ 89,80,889/-
15.	Occupation certificate /Completion certificate	21.12.2020 (pg. 192 of complaint)
16.	Offer of possession	23.08.2021 (pg. 178 of complaint)
17.	Demand letter 1	27.08.2021 (pg. 177 of complaint)
18.	Cancellation date	13.05.2019 (pg. 170 of complaint)

B. Facts of the complaint:

3. The complainants have contested the complaint on the following grounds:
 - a. That complainants were contacted to book an apartment in the project "Godrej 101" through marketing representative of godrej properties over phone and thereafter vide email dated 15th September 2015 offering pre-launch discount for booking an apartment in a residential group housing complex.
 - b. That complainants with fantastic promises, and assurance booked an apartment bearing no. A0005 admeasuring 1491 sq. ft. in the project for total sale consideration of ₹ 99,80,104/- of the



apartment and that the project would be completed no later than February 2019.

- c. The complainants till 29.10.2015 paid a sum of ₹ 19,05,897/- and were issued allotment letter dated 24.02.2016 and followed by apartment buyers' agreement dated 30.12.2016. It is pertinent to mention that respondent vide email dated 25th July 2017 intimated that the completion of superstructure would be achieved within next 60 days, and to make arrangements for the funds; according to which completion of superstructure should have been achieved well before 25th September 2017.
- d. It is pertinent to note that construction updates shared by respondent showed that internal and external finishing were still in progress as on 25th February 2020. That respondent violated and repeatedly failed to keep to commitment dates for flooring and such other construction milestones taking his own time in completing them. That respondent vide letter dated 29.12.2020 communicated grant and issuance of the occupation certificate dated 21.12.2021 for the project. It is pertinent to note that under the promised delivery date, OC was to be obtained on or before 28.02.2019.
- e. On 13.05.2019, the respondent sent a termination letter after forfeiting an amount of ₹ 36,11,752.08/-. The respondent offered to reinstate allotment only on payment of unlawful demand of ₹ 20,52,354.62/- with interest charges of ₹ 6,05,707/- and reinstatement fees ₹ 1,07,744/-including GST.

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- f. The complainants made payment as demanded by the respondent out of fear of losing their hard-earned money. The respondent vide email dated 27.08.2021 offered possession. It is pertinent to mention that the complainants during inspection noted incompleteness of work and notified the respondent about the same.
- g. The complainants called upon the respondent to withdraw intimation of possession letter dated 23.08.2021 and to raise a fresh intimation of possession after completing the work and crediting delayed possession charges to the complainants.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):

- i. Direct the respondent to withdraw intimation of possession dated 23.08.2021 and demand invoice dated 27.08.2021 thereunder, being invalid, premature, wrong, unjustified and unlawful.
- ii. Direct respondent to credit to the account of complainants a sum of amounts unjustifiably and unlawfully demanded and collected by respondent as interest charges ₹ 6,05,707/- and reinstatement fees of ₹ 1,07,744/- as advance payment towards intimation of possession instalment.
- iii. Direct respondent to indemnify complainants against any increase in costs, levy, taxes, charges including but not limited to maintenance charges, expenses, duties, increases under anyone of the cost heads including but not limited to taxes, duties, charges, expenses, monthly maintenance charges and such others till the actual handing over of vacant peaceful physical possession to complainants.

- iv. Direct respondent to credit to the account of complainants delayed possession interest amount as advance payment towards intimation of possession instalment calculated from promised delivery date of February 2019 till the actual date of transfer of title in accordance with applicable provisions under RERA, HARERA Rules and Regulations made thereunder.
- v. Direct respondent to remove external electrification and power back up charges and credit the total amount collected from complainants till date under these heads to the account of complainants as advance payment against intimation of possession instalment, while raising lawful and valid intimation of possession incorporating the credit amounts as mentioned in (1), (2) and (3) above.
- vi. Direct respondent to share format of the indemnities, undertakings, declarations, apartment deed and any other and such documents that respondent is lawfully entitled to receive acceptance of complainant upon.
- vii. Direct respondent to share the basis of appointment of the maintenance agency, and to seek opinion/ approval of allottees in the project including that of complainants to ensure transparency, cost efficiency, and effectiveness of the maintenance service provider.

D. Reply by respondent:

5. The respondent by way of written reply made following submissions:
 - a. The respondent denies all the averments made by the complainants. It is submitted that the complainants booked an





apartment in the project "Godrej 101" and were allotted apartment bearing no. A0005 on ground floor in tower-A.

- b. The complainants unconditionally and unequivocally agreed to the terms and conditions of the apartment buyer agreement dated 30.12.2016. Hence, the respondent raised all the demands according to the payment plan. The complainants made defaults in making timely payments and many reminder letters dated 16.12.2017, 02.07.2018, 25.07.2018 and thereafter final reminder letter dated 13.05.2019.
 - c. It is pertinent to mention that the reinstatement of the unit was on the request made by the complainants. Hence, the complainants were charged the reinstatement fee, and which was duly paid by them. On 23.08.2021, the possession was offered to the complainants and they were obligated to pay the holding and maintenance charges in terms of clauses 5.4 and 7.3 of the agreement.
 - d. It is pertinent to mention that the shortcomings pointed by the complainants were minor issues and the same were duly rectified by the respondent. The possession was offered on time to the complainants and hence the complainants are not entitled for any delay possession charges. All averments were denied in toto.
6. Copies of all the relevant documents have been filed and placed on 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:

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7. The plea 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. 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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

10. 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 relief sought by the complainants:

- F.I. Direct the respondent to withdraw intimation of possession dated 27.08.2021 and demand invoice dated 23.08.2021 thereunder, being invalid, premature, wrong, unjustified, and unlawful.**
- F.II. Direct respondent to credit to the account of complainant(s) delayed possession interest amount as advance payment towards intimation of possession instalment. calculated from promised delivery date of February 2019 till the actual date of transfer of title in accordance with applicable provisions under RERA, HARERA Rules and Regulations made thereunder.**
11. The respondent had offered the allotted unit to the complainants on 23.08.2021 after obtaining occupation certificate on 21.12.2020. The complainants, however, alleged that the said offer of possession is to be set aside, as the unit is still not fit for possession. It is to be noted that for a valid possession if the subject unit should be in habitable condition.
12. The complainant filed a rejoinder on 22.03.2022 wherein it submitted proof of internal and external furnishing still not being complete. According to Architect's Certificate, till the end of Q3 of 2019, only 73% of external wall finishing and 80% of internal wall finishing was complete. Further, the complainant has also submitted photos from December 2019 on page 151 wherein the internal and external work is in progress. It is reiterated that the payment of intimation of possession mail was done on 23 August 2021 which is 1 year 8 months after the photos were clicked and the architect's certificate was



obtained which is project specific and not for a particular unit. Hence, there is not sufficient evidence to prove that the unit was not habitable and thus, in view of the authority the intimation of possession was valid as same has been made after obtaining occupation certificate from competent authority.

13. The complainants are seeking delay possession charges at the prescribed rate and 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.

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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 delay payments from the complainant shall be charged at the prescribed rate i.e., 10% by the respondent/promoters which is the same as is being granted to the complainants in case of delayed possession charges.
17. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of 48 months from the date of allotment letter i.e., 24.02.2016. The period of 48 months expired on 24.02.2020. Since in the present matter the allotment letter incorporates unqualified reason for grace period/extended period of 12 months in the possession clause. Accordingly, the authority allows this grace period of 12 months to the promoter at this stage being unqualified. The promoter submitted to



grant the further grace period of 6 months due to COVID-19 outbreak throughout the country. The authority is of the considerate view that since an unqualified grace period as mentioned in the possession clause has already been granted by the authority therefore, another grace period of 6 months due to COVID-19 shall not be considered. Accordingly, the due date of possession comes out to be 24.02.2021.

18. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondents are in contravention of the section 11(4)(a) of the act by not handing over possession by the due date as per the agreement. The respondent delayed in offering the possession. Accordingly, it is the failure of the respondent/promoter to fulfil their obligations and responsibilities as per the agreement 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 respondents 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., 24.02.2021 till date of offer of possession (23.08.2021) plus two months i.e., 23.10.2021 at 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.III. Direct respondent to credit to the account of complainant(s) sum of amounts unjustifiably and unlawfully demanded and collected by respondent as interest charges ₹ 6,05,707/- and reinstatement fees of ₹ 1,07,744/- as advance payment towards intimation of possession instalment.

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19. The respondent cancelled the unit of the complainants for non-payment of the amount due. Thereafter, on request of complainant the unit was re-instated by the respondent upon charging a particular fee. Since this was at the mutual consent of both the parties therefore, the authority shall not deliberate upon this issue.

F.IV. Direct respondent to remove external electrification and power back up charges and credit the total amount collected from complainants till date under these heads to the account of complainants as advance payment against intimation of possession instalment, while raising lawful and valid intimation of possession incorporating the credit amounts as mentioned in (1), (2) and (3) above.

20. The respondent-builder has raised a demand of ₹ 1,49,100/- on pretext of electrification charges. As decided in *Complaint bearing no. CR/4031/2019 Varun Gupta Vs. Emaar MGF Land Limited*, the promoter cannot charge electrification charges from the allottees while issuing offer of possession letter of a unit even though there is any provision in the builder buyer's agreement to the contrary to it.
21. Occupation certificate is always provided by the competent authority to the promoter only after the completion of the building when the same is ready for possession and occupation. Unless and until the building has the electricity which also includes the power backup system and water connections, how can the same be said to be fit for occupation. Electricity is an eye and water is the soul of a dwelling unit. Therefore, if these two facilities are not provided to the allottee in the unit, the allottee himself cannot survive. Hence, charging under these heads is not justifiable for these reasons as well except for

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reasonable charges paid to the concerned department towards electric & water meter charges.

- F.V. Direct respondent to share format of the indemnities, undertakings, declarations, apartment deed and any other and such documents that respondent is lawfully entitled to receive acceptance of complainant upon.**
- F.VI. Direct respondent to share the basis of appointment of the maintenance agency, and to seek opinion/ approval of allottees in the project including that of complainant(s) to ensure transparency, cost efficiency, and effectiveness of the maintenance service provider.**
- F.VII. Direct respondent to indemnify complainant(s) against any increase in costs, levy, taxes, charges including but not limited to maintenance charges, expenses, duties, increases under anyone of the cost heads including but not limited to taxes, duties, charges, expenses, monthly maintenance charges and such others till the actual handing over of vacant peaceful physical possession to complainant.**

22. The above-mentioned reliefs sought by the complainants were not pressed by the complainant's council during the arguments during the passage of hearing. The authority is of the view that the complainants does not intend to pursue the above-mentioned relief sought. Hence, the authority has not raised with regard to above mentioned reliefs.

H. Directions of the Authority:

23. 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 functions entrusted to the Authority under section 34(f) of the Act of 2016:
- 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., 24.02.2021 till the date of offer of the possession of the unit (23.08.2021) plus 2 months i.e., 23.10.2021 at prescribed rate i.e., 10% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

- ii) External electrification would not be charged by the promoter as decided in complaint bearing no. **CR/4031/2019 Varun Gupta Vs. Emaar MGF Land Limited.**
- iii) A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.
24. Complaint stands disposed of.
25. File be consigned to the registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.10.2022