

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

Complaint no. : 4218 of 2022
Date of decision : 24.11.2022

Brig. Puneet Ahuja
R/o: - 26/4, Old Rajendra Nagar, New Delhi- 110060

Complainant

Versus

M/s Emaar India Ltd.
Address: Emaar MGF Business Park,
Mehrauli Gurgaon Road, Sikandarpur Chowk,
Sector-28, Gurugram-122002, Haryana.

Respondent

Coram:

Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

**Member
Member**

Appearance:

Shri Hemant Saini
Shri J.K Dang

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 23.06.2022 have 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. Project and unit 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:

Sr. No.	Particulars	Details
1.	Name of the project	Emerald Estate at Emerald Hills Sector 65, Gurugram, Haryana
2.	Unit no.	EEA-B-F03, 3 rd floor, building no. B [page 48 of complaint]
3.	Provisional allotment letter dated	29.09.2009 [annexure R2, page 29 of reply]
4.	Date of execution of buyer's agreement	15.03.2010 [annexure R4, page 31-91 of reply]
5.	Possession clause	<p>11. POSSESSION</p> <p>(a) Time of handing over the possession</p> <p><i>Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 36 months from the date of commencement of construction and development of the Unit. The Allottee(s) agrees and understands that the Company shall be</i></p>



		<p><i>entitled to a grace period of <u>six months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project.</u></i></p> <p>(Emphasis supplied)</p>
6.	Date of start of construction	26.08.2010
7.	Due date of possession	26.08.2013 [Note: Grace period is not included]
8.	Total consideration as per schedule of payment page 72 of reply	Rs.38,14,435/-
9.	Total amount paid by the complainant as per calculation sheet submitted by the respondent on 111 of the reply	Rs.35,63,994/-
10.	Occupation certificate	11.11.2020 [annexure R9, page 118-120 of reply]
11.	Offer of possession	20.11.2020 [annexure R10, page 121-125 of reply]

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

- i. That the complainant is a serving Army Officer, who is serving, at present, at Army Head Quarters, New Delhi. The complainant is filing the complaint against the respondent/developer for a direction to

deliver the possession of the flat in question, with the prescribed rate of interest, as per the Act, of 2016, and the of Rules, 2017, having caused a long delay of more than 8 years in offering the incomplete possession on 20.11.2020, subsequent to the execution of the flat buyer's agreement, dated 08.09.2009, as per which, the deemed date of possession promised to the complainants by the developer was 08.03.2013. (i.e., 36 months from the date of execution of the buyer's agreement, plus 6 months grace period).

- ii. That on 23.08.2009, the complainants had paid a booking amount of Rs.5,00,000/- out of the total consideration of the allotted unit, and had booked a unit bearing no. EEA-H-F05-02, located on 05th floor, situated in block/building no. H, admeasuring a super area of 94.76 sq. Mtrs., and (1020 in sq.ft.) at Emerald Estate, at Emerald Hills, Gurugram, launched by respondent/promoter, and signed the flat buyer's agreement with the aforesaid respondents/promoters. The total basic price of the unit was Rs.38,14,435.30/-.
- iii. That, on 05.09.2009, and 22.10.2009 the respondents issued receipts no. 238324 and 238325 in respect of allotted unit, against cheques no. 238324 and 238325, dated 23.08.2009 and 22.10.2009 for an Rs.5,00,000/- and Rs.1,97,887.06/- drawn on UCO Bank, payable at Parliament Street, New Delhi, issued by the complainant towards the payment of the booking amount of the aforementioned unit.

- iv. That on 09.11.2009, the respondent sent the demand letter no. EEA/706386-PR-020, informing the complainant to deposit the 2nd installment. Thereafter, on 05.12.2009, the complainant made payment vide cheque no. 238327, for Rs.2,61,707.65/- drawn on UCO Bank, of the allotted unit and accordingly after realization of the cheque, respondents issued receipt no. 238327.
- v. That on 06.08.2010, the respondents sent the demand letter no. EEA/706386-PR-030, informing the complainant to deposit the 3rd instalment. Thereafter, the complainant deposited the due payment of 3rd installment, and issued cheque no.238328, dated 21.08.2010, for Rs.1,74,471.76/- drawn on UCO Bank, payable at Parliament Street, New Delhi, and accordingly after realization of the cheque, respondents issued acknowledgement-cum-receipt no. 20851/005 dated 23rd August 2010.
- vi. That on 02.11.2010, respondents sent the demand letter no. EEA/706386, informing the complainant to deposit the service tax with reference to the Central Government Notification No.1/2006-ST dated 1.3.2006, as amended by Notification No.29/2010-ST dated 22.6.2010, w.e.f. 1.7.2010, and Notification No.36/2010 dated 28.06.2010, as the service tax is applicable on all the payments made by the complainant on or after 01.07.2010. Thereafter, the complainant deposited the due payment of service tax, and issued cheque no. 235617, dated 11.11.2010, for Rs.4,138.61/- drawn on

HDFC Bank, payable at SG. 5-6, DLF Phase-4, Galleria Marker, Gurgaon, and accordingly, respondents issued acknowledgement-cum-receipt no. 20851/006 dated 12.11.2010.

- vii. That the break-up of the amount to be paid as per the basic price of Rs.38,14,435.30/-, was appended to the flat buyer's agreement.
- viii. That the respondent/promoter has incorporated a one-sided clause for the grant of delay penalty @ Rs.5/- per sq.ft. per month of super area, which has been already reproduced in the preceding paragraphs, and the aforesaid clause is absolutely one sided.
- ix. That the said clauses are unilateral as the respondents have only tried to save themselves from compensating the complainant in case of a delay in completion of the project and in giving the possession of the flat to the complainant. That the respondents have only tried to considerably limit their own liability and impose unfair and arbitrary interest on the complainant in order to grab their hard-earned money. Such clauses also create a fear in the minds of the customers to make the payments as per the whims and arbitrary demands of the companies as they are under a constant fear of paying considerably more than what they would have been normally charged. These clauses give arbitrary power to the companies to exploit its customers and should be dealt with a heavy hand by the authority.
- x. That the complainant wishes to submit that the provisions of the floor buyer's agreement in relation to the compensation are unilateral and

lopsided in nature and they should not be read in while deciding the amount of compensation for the complainants. The complainant is entitled to compensation at the same rate of interest which the respondent has charged from the complainant in case of delay in the payment of installment. The while the present application has been made for the immediate delivery and delay penalty the complainant reserve the right to file separate application for compensation before this authority. The Act, 2016 clearly provides that the allottee can claim the payment of prescribed rate of interest in the form of monthly installments if the builder fails to deliver the possession of the apartment/unit within the promised time frame.

- xi. That on 20.11.2020, the complainant has received a letter of offer of possession from the respondent/promoter after a delay of almost 8 years from the promised date of delivery of the unit as per the buyer's agreement, dated 08.09.2009, without adjusting the delay interest as per the Act, 2016, along with compensation as per the Act.
- xii. That the complainants are entitled to get interest at the prescribed rate for every month of delay from due date of possession till the handing over the possession as per section 18 of the Act, 2016. The complainants are also entitled for any other relief, which they are found entitled by this authority. The complainant reserve their right to seek compensation from this authority, should they choose to litigate for the same

C. Relief sought by the complainant

4. The complainant has filed the present compliant for seeking following reliefs:
- Direct the respondent to handover the possession of the unit along with all the promised amenities and facilities to the satisfaction of the complainant along with prescribed rate of interest.
5. 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 and to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has contested the present complaint on the following grounds:
- That the complaint is not maintainable in law or on facts. The complaint is not maintainable before this authority under the Act, 2016 and the Rules, 2017. The present complaint is liable to be dismissed on this ground alone. Even otherwise, the complaint is not maintainable in law and merits dismissal.
 - That the complaint is not maintainable in law or on facts. The present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in

the present complaint are beyond the purview of the authority and can only be adjudicated by the Civil Court. The present complaint deserves to be dismissed on this ground alone.

- iii. That the complainants have no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 05.03.2010, as shall be evident from the submissions made in the following paras of the present reply.
- iv. That the complainants are not "Allottees" but Investors who have booked the unit in question as a speculative investment in order to earn rental income/profit from its resale. The unit in question has been booked by the complainants as a speculative investment and not for the purpose of self-use as a residence. That the complainants have not come before this authority with clean hands and has suppressed vital and material facts from this authority.
- v. That the complainants had approached the respondent and expressed their interest in booking a unit in the residential group housing colony developed by the respondent known as "Emerald Estate Apartments" situated in Emerald Estate, Sector 65, Gurgaon. Prior to make the booking, the complainants conducted extensive and independent enquiries with regard to the project and it was only after the complainants were fully satisfied about all aspects of the project, that

the complainants took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question. That at the time of application, the building plans of the project had not yet been approved by the competent authority and this fact was clearly and transparently disclosed to the complainants at the time of booking itself and clearly mentioned in the application form. The complainants were conscious and aware that the construction would commence only after approval of building plans and as such were fully conscious and aware that time was not the essence of the contract when it came to delivery of possession.

- vi. That unit bearing number EEA-H-F05-02 was provisionally allotted to the complainants having tentative super area of 1020 sq. ft. An application form, letter dated 29.09.2009 and payment plan issued in favour of the complainants. The buyer's agreement executed between both the parties on 05.03.2010. That the buyer's agreement was willingly and voluntarily executed by the complainants without raising any objection and the terms and conditions of the buyer's agreement were duly accepted by the complainants and the same are binding upon the complainants with full force and effect.
- vii. That the complainants had opted for a construction linked payment plan and had agreed and undertaken to make payment in accordance therewith. However, the complainants consciously defaulted in payments on several occasions. Consequently, the respondent was

constrained to issue notices and reminders for payment to the complainants.

- viii. That the calculation sheet reflecting the payments made by the complainants and the accrued delayed payment interest. The project has been registered under the Act and the registration of the project is valid till 23.08.2022.
- ix. That the respondent completed construction of the apartment /building and applied for the issuance of the occupation certificate on 17.03.2020. The Occupation Certificate was issued by the competent authority on 11.11.2020. It is respectfully submitted that the grant of occupation certificate is the prerogative of the concerned statutory authority, and the Respondent does not exercise any control or influence over the same. Therefore, time period utilized by the concerned statutory authority in granting the occupation certificate to the respondent is necessarily required to be excluded from computation of time period utilized for implementation of the project.
- x. That upon receipt of the occupation certificate, the complainants were offered possession of the unit in question through letter of offer of possession dated 20.11.2020. The compensation amounting to Rs3,81,955/- was paid to the complainants in accordance with the buyer's agreement for delay in offering possession. The complainants were called upon to remit balance payment including delayed payment charges and to complete the necessary

formalities/documentation necessary for handover of the unit in question to them. The complainants executed the Indemnity cum Undertaking on possession but refrained from making payment of balance amounts and from taking possession of the unit.

- xi. That without admitting or acknowledging in any manner the truth or legality of the allegations levelled by the complainants and without prejudice to the contentions of the respondent, it is submitted that the project has got delayed on account of the following reasons which were /are beyond the power and control of the respondent and hence the respondent cannot be held responsible for the same.
- xii. That the respondent was constrained to terminate the contract of one of the contractors of the project which has also contributed to delay in construction activities at the site. The details of the same areas under.
- xiii. That a contract dated 01.11.2010 was executed between the respondent and M/s B L Kashyap and Sons (BLK/Contractor) in terms of which the contractor was to construct residential projects being developed by the respondent in the name and style of "Emerald Estate" and "Emerald Floors Premier", including civil, structure, finishing, MEP, external development, infrastructure, horticulture, EWS, clubhouses, swimming pools, convenience shopping etc. The start date of the project as determined by the parties was 26.07.2010 and the scheduled date of completion of the project was 25.07.2013.

- xiv. That the contractor was not able to meet the agreed timelines for construction of the project. The progress of work at the project site was extremely slow on account of various defaults on the part of the contractor, such as failure to deploy adequate manpower, shortage of materials etc. in this regard, the respondent made several requests to the contractor to expedite progress of the work at the project site. However, the contractor did not adhere to the said requests and the work at the site came to a standstill.
- xv. That in the aforesaid circumstances, the respondent was constrained to issue notice of termination dated 16.01.2015, terminating the contract and calling upon the contractor to remove itself from the project site without removal/damage to the materials, equipment, tools, plant & machinery, and to hand over the contract documents.
- xvi. That however, the parties settled the disputes during the pendency of the aforesaid proceedings and the contractor assured the respondent that the project shall be completed within the decided timeline. This was considered to be in the interest of the project as well as to mitigate losses, since considerable time would have been spent in re-tendering of the works. Further, the contractor had also undertaken to complete the project within the agreed timelines i.e., within eighteen (18) months.
- xvii. That without admitting or acknowledging in any manner the truth or correctness of the frivolous allegations levelled by the complainants

and without prejudice to the contentions of the respondents, it is submitted that the alleged interest frivolously and falsely sought by the complainants was to be construed for the alleged delay in delivery of possession. It is pertinent to note that an offer for possession marks termination of the period of delay, if any. The complainants are not entitled to contend that the alleged period of delay continued even after receipt of offer for possession. The complainants have intentionally distorted the real and true facts in order to generate an impression that the respondent has reneged from its commitments. No cause of action has arisen or subsists in favour of the complainants to institute or prosecute the instant complaint. The complainants have preferred the instant complaint on absolutely false and extraneous grounds in order to needlessly victimise and harass the respondent.

xviii. There is no default or lapse on the part of the respondent. The respondent has duly fulfilled its obligations under the buyer's agreement by completing construction and offering possession in accordance with the buyer's agreement, within the period of validity of registration of the project under the Act. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainants are totally baseless. There is no merit in the allegations raised by the

complainants. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

xix. That although not entitled to any compensation under the buyer's agreement, the respondent has credited compensation amounting to Rs.3,81,955/- to the complainant. The respondent has also credited sum of Rs.14,220/- as benefit on account of anti-profiting. Furthermore, an EPR (Early Payment Rebate) of Rs.1,73,947/- was also credited. Without prejudice to the rights of the respondent, delayed interest if any has to be calculated only on the amounts deposited by the allottees/complainants towards the basic principle amount of the unit in question and not on any amount credited by the respondent, or any payment made by the allottees/complainants towards delayed payment charges or any taxes/statutory payments etc.

E. Jurisdiction of the authority

7. The authority observed 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, Haryana 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 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;

The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.

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.

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 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 Complainant at a later stage.

F. Findings on the reliefs sought by the complainant

F.I Possession and Delay possession charges

11. **Relief sought by the complainant:** Direct the respondent to handover the possession of the unit along with all the promised amenities and facilities to the satisfaction of the complainant along with prescribed rate of interest.
12. In the present complaint, the complainant intends 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."

13. Clause 11(a) of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

"11. POSSESSION

(a) Time of handing over the Possession

Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 36 months from the date of commencement of construction and development of the Unit. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of six months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project."

14. 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 the complainant not being in default under any provisions of this agreement 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 time period 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 floor and to deprive the allottees of their 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.

15. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 36 months from the date of commencement of construction and it is further provided in agreement that promoter shall be entitled to a grace period of six months for applying and obtaining completion certificate/occupation certificate in respect of said floor. The period of 36 months expired on 26.08.2013. As a matter of fact, the promoter has not applied to the concerned authority for obtaining completion certificate/occupation certificate within the time limit

prescribed by the promoter in the buyer's agreement. As per the settled law one cannot be allowed to take advantage of his own wrong. Accordingly, this grace period of six months cannot be allowed to the promoter at this stage.

16. **Admissibility of delay possession charges at prescribed rate of interest:** 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.

17. The legislature in its wisdom in the subordinate legislation under the 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.
18. 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., 24.11.2022 is 8.35%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.35%.

- 19. Rate of interest to be paid by complainant/allottee for delay in making payments:** 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;"*

20. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.35% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
21. On consideration of the documents available on record and submissions made by the parties regarding contravention as per 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 11(a) of the buyer's agreement

executed between the parties on 15.03.2010, possession of the said unit was to be delivered within a period of 36 months from the date of commencement of construction and it is further provided in agreement that promoter shall be entitled to a grace period of six months for applying and obtaining completion certificate/occupation certificate in respect of said floor. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 26.08.2013. In the present case, the Complainant was offered possession by the respondent on 20.11.2020 after obtaining occupation certificate dated 11.11.2020 from the competent authority. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the Complainant as per the terms and conditions of the buyer's agreement dated 15.03.2010 executed between the parties.

22. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 11.11.2020. However, the respondent offered the possession of the unit in question to the complainant only on 20.11.2020, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, they should be given 2 months' time from the date of offer of possession. These 2 months'


of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 26.08.2013 till the expiry of 2 months from the date of offer of possession (20.11.2020) which comes out to be 20.01.2021. Also, the complainant is directed to take possession of the unit in question within 2 months from the date of this order as per section 19(10) of the Act.

23. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant are entitled to delay possession charges at prescribed rate of the interest @ 10.35 % p.a. w.e.f. 26.08.2013 till 20.01.2021 i.e. expiry of 2 months from the date of offer of possession i.e. 20.11.2020. as per provisions of section 18(1) of the Act read with rule 15 of the rules.


F. Directions of the authority

24. 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 the interest at the prescribed rate i.e., 10.35% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 26.08.2013 till 20.01.2021 i.e. expiry of 2 months from the date of offer of possession i.e. 20.11.2020. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.
- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iii. The respondent shall not levy/recover any charges from the complainant which is not the part of the buyer's agreement. The respondent is also not entitled to claim holding charges from the complainant/allottees at any point of time even after being part of the buyer's agreement as per law settled by hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.
25. Complaint stands disposed of.
26. File be consigned to registry.


Sanjeev Kumar Arora
Member

Haryana Real Estate Regulatory Authority, Gurugram


Ashok Sangwan
Member

Dated: 24.11.2022