

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

Complaint no. : 1843 of 2021
First date of hearing : 17.08.2022
Date of decision : 24.11.2022

1. Gunjan Shrivastava
2. Lalit Sharma

Address:- 1554, Sector 18, Huda Sector
Panipat , Haryana -132103

Complainants

Versus

M/s Emaar India Ltd.

Address: 306-308, Square One, C-2, District Centre,
Saket, New Delhi-110017

Respondent

Coram:

Shri Vijay Kumar Goyal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Member
Member
Member

Appearance:

Shri Maninder Singh
Shri Harshit Batra

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint dated 27.04.2022 have been filed by the complainants/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 complainants, 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	Imperial Garden, Sector 102, Gurugram, Haryana
2.	Total area of the project	12 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	107 of 2012 dated 10.10.2012
	Validity of license	09.10.2020
	Licensee	Kamdhenu Projects Pvt. Ltd.
	Area for which license was granted	12 acres
5.	Registered/not registered	Registered in two phases i. 208 of 2017 dated 15.09.2017 [Valid up to 31.12.2018 for 49637 sq. mtrs. and extension granted vide no.3/2019 dated 02.08.2019 which is extended up to 31.12.2019] ii. 14 of 2019 dated 28.03.2019(Phase II) [Valid up to 17.10.2018 for 4.57 acres]
6.	Occupation certificate	17.10.2019 [annexure R7, page 127-130 of reply]
7.	Provisional allotment letter dated	23.11.2018
8.	Unit no.	IG-05-1204, 12 th floor, building no. 05

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9.	Area of the unit (super area)	2025 sq. ft.
10.	Date of execution of buyer's agreement	31.12.2018 [annexure R3, page 35 of reply]
11.	Possession clause	7. POSSESSION AND SALE DEED (a) Within 60 (sixty) days from the date of issuance of Occupation Certificate by the concerned Authorities, the Company shall offer the possession of the unit to the Allottee. Subject to Force Majeure and fulfillment by the Allottee of all the terms and conditions of this Agreement including but not limited to timely payment by the Allottee of the Total Price payable in accordance with Payment Plan Annexure-III, along with stamp duty, registration and incidental charges and other charges in connection thereto due and payable by the Allottee and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company shall offer the possession of the Unit to the Allottee on or before 31-12-2018. (Emphasis supplied)
12.	Due date of possession	31.12.2018 [Note: as per mentioned in the buyer's agreement]
13.	Total consideration as per payment plan annexed with the buyer's agreement at pg. 90 of reply	₹ 1,28,75,835/-
14.	Total amount paid by the complainants as per calculation sheet at page 145 of reply	₹ 1,07,90,332/-
15.	Offer of possession	11.11.2019

Handwritten signature/initials



B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
- I. That the respondent is a company, working in field of construction and development of residential as well as commercial projects across the country in the name of Emaar Mgf land limited. That the respondent had advertised itself as a very ethical business group that lives onto its commitments in delivering its housing projects as per promised quality standards and agreed timelines. That the respondent while launching and advertising any new housing project always commits and promises to the targeted consumer that their dream home will be completed and delivered to them within the time agreed initially in the agreement while selling the dwelling unit to them. They also assured to the consumers like complainant that they have secured all the necessary sanctions and approvals from the appropriate authorities for the construction and completion of the real estate project sold by them to the consumers in general.
 - II. That the respondent was very well aware of the fact that in today's scenario looking at the status of the construction of housing projects in India, especially in NCR, the key factor to sell any dwelling unit is the delivery of completed house within the agreed and promised timelines and that is the prime factor which a consumer would consider while purchasing his/her dream home. Respondent,



therefore used this tool, which is directly connected to emotions of gullible consumers, in its marketing plan and always represented and warranted to the consumers that their dream home will be delivered within the agreed timelines and consumer will not go through the hardship of paying rent along-with the installments of home loan like in the case of other builders in market.

- III. That in November 2018, the respondent through its marketing executives and advertisement through various medium and means approached the complainants with an offer to invest and buy a flat in the proposed project of Respondent, which the Respondent was going to launch the project namely "Imperial Gardens" in the Sector-102, Gurugram (hereinafter referred to as "Said Project"). The respondent represented to the complainant that the respondent is a very ethical business house in the field of construction of residential and commercial project and in case the complainants would invest in the project of respondent then they would deliver the possession of proposed flat on the assured delivery date as per the best quality assured by the respondent. The respondent had further assured to the complainants that the respondent has already secured all the necessary sanctions and approvals from the appropriate and concerned authorities for the development and completion of said project on time with the promised quality and specification. The respondent had also shown the brochures and advertisement

material of the said project to the complainants given by the respondent and assured that the allotment letter and builder buyer agreement for the said project would be issued to the complainants within in a very short time after the booking. The complainants while relying on the representations and warranties of the respondent and believing them to be true had agreed to the proposal of respondent to book the residential flat in the project of respondent.

- IV. That respondent arranged the visit of its representatives to the complainant, and they also assured the same as assured by respondent to the complainants, wherein it was categorically promised by the respondent that they already have secured all the sanctions and permissions from the concerned authorities and departments for the sale of said project and would allot the residential flat in the name of complainants immediately upon the booking. Relying upon those assurances and believing them to be true, complainants booked a residential flat/ bearing No. IG-05-1204 on 12th Floor in Tower – 05 in the proposed project of the respondent measuring approximately super area of 2025 sq. ft. in the township to be developed by respondent. It was assured and represented to the complainants by the respondent that it had already taken the required necessary approvals and sanctions from the concerned authorities and departments to develop and complete the proposed project on the time as assured by the respondent. Accordingly, the

complainants have paid Rs.1,00,000/- (Rupees One Lakh only) through RTGS in the account of respondent as booking amount.

- V. That thereafter, the respondent started raising the demand of money /installments from the complainant, which was duly paid by the complainants as per agreed timelines ,however as per the clause - 7(a) of the said buyer's agreement, the respondent had agreed and promise to complete the construction of the said flat and deliver its possession on or before 31st December 2018. That from the date of booking and till today, the respondent had raised various demands for the payment of installments on complainants towards the sale consideration of said flat and the complainants have duly paid and satisfied all those demands as per the flat buyers agreement without any default or delay on their part and have also fulfilled otherwise also their part of obligations as agreed in the flat buyers agreement. The complainants were and have always been ready and willing to fulfill their part of agreement, however the complainant(s) have paid a sum of rs.6,25,425/- in surplus to the respondent. That on the date agreed for the delivery of possession of said unit was i.e. 31.12.2018 according to flat buyers agreement the complainants approached the respondent and its officials inquiring the status of delivery of possession but none had bothered to provide any satisfactory answer to the complainants about the completion and delivery said flat.

VI. That the respondent handed over the keys of the aforesaid apartment' in the month of February 2020 to the complainant(s) but till today the respondent haven't executed the sale deed in favour of the complainant. That the complainants jointly and severally have paid the sale consideration as demanded by the respondent for the said flat. As per the receipts, upon the request of the complainants, the complainants have already paid Rs.1,36,25,062/- towards total sale consideration as on today to the respondent as demanded time to time. That the conduct on part of respondent regarding delay of approximately 1 year and months in delivery of possession of the said flat till February 2020 when the respondent handed over the keys of flat to the complainant(s) has clearly manifested that respondent never ever had any intention to deliver the said flat on time as agreed. It has also cleared the air on the fact that all the promises made by the respondent at the time of sale of involved flat were fake and false. The respondent had made all those false, fake, wrongful and fraudulent promises just to induce the complainants to buy the said flat basis its false and frivolous promises, which the respondent never intended to fulfill.

VII. That the respondent in its advertisements had represented falsely regarding the area, price, quality and the delivery date of possession and resorted to all kind of unfair trade practices while transacting with the complainants. That the respondent has committed grave



deficiency in services by delaying the delivery of possession and false promises made at the time of sale of the said flat which amounts to unfair trade practice which is immoral as well as illegal. The respondent has also criminally misappropriated the money paid by the complainants as sale consideration of said flat by not delivering the unit by agreed timelines. The respondent has also acted fraudulently and arbitrarily by inducing the complainants to buy the said flat basis its false and frivolous promises and representations about the delivery timelines aforesaid housing project. That relying upon respondent's representation and believing them to be true, the complainants were induced to pay Rs.1,36,25,062/- as sale consideration of the aforesaid flat as on today. That the cause of action accrued in favour of the complainants and against the respondent in November 2018 when the complainants had booked the said flat and it further arose when respondent failed /neglected to deliver the said flat. The cause of action is continuing and is still subsisting on day-to-day basis.

C. Relief sought by the complainants

4. The complainants have filed the present compliant for seeking following reliefs:
 - i. Direct the respondent to pay interest at the applicable rate on account of delay in offering possession on Rs.1,36,25,062/- paid by the

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complainants as sale consideration of the said flat from the date of payment till the date of delivery of possession.

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 raised certain preliminary objections and has contested the present complaint on the following grounds:

- i. That at the very outset, it is submitted that the instant complaint is untenable both in facts and in law and is liable to be rejected on this ground alone. That the complainants are estopped by their own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. That the complainants have not approached the authority with clean hands as have nowhere divulged the authority with the fact that they have been in constant defaults in making good on their part of the obligations. That the complainants are willful and persistent defaulters in making the payments and have willfully concealed that fact thereof. That approaching this forum with half cooked and manipulated stories is a grave violation of the doctrine of clean hands and hence, this complaint is liable to be dismissed on this ground alone. 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

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agreement dated 31.12.2018, as shall be evident from the submissions made in the following paras of the present reply.

- ii. That the allottees Mrs. Gunjan Shrivastav and Mr. Lalit Sharma being interested in the real estate development of the respondent, a group housing colony known under the name and style of "**Imperial Garden**" ("**Project**") tentatively applied for allotment via application form and were consequently allotted unit no. IG-05-1204 on 12th floor having a super area of 2025 sq. ft. ("**Unit**") vide provisional allotment letter dated 23.11.2018 and consequently through the buyer's agreement dated 31.12.2018.
- iii. That the relationship between the parties is contractual in nature and is determined by the terms and conditions of the buyer's agreement executed with the complainants. The parties had categorically, voluntarily, and willingly agreed to the terms and conditions of the buyer's agreement and the status of the project and the unit. That according to the Clause 7(a) of the buyer's agreement, the delivery of possession of the unit was proposed to be within 60 days from the issuance of OC by the concerned authority subject to force majeure and compliance of all the terms and conditions by the allottees including but not limited to the timely payment of the total price payable in accordance with the payment plan. That clause 7 of the buyer's agreement provides that subject to force majeure conditions and delay caused on account of reasons beyond the control of respondent company, and subject to the allottee not being in default in any of the terms and conditions of the same, the respondent expects to deliver possession of the apartment

within the period of 60 days from the date of issuance of the occupation certificate by the competent authority.

- iv. The occupation certificate was issued by the competent authority on 17.10.2019 and the offer of possession was issued on 11.11.2019. Thus, there is no delay on part of the respondent company in delivering of the said unit as alleged by the complainants. Further, Clause 7(a) specifically provides that respondent shall offer possession of the unit to the allottee on or before 31.12.2018 or ***such time as may be extended by the competent authority.*** That it is pertinent to mention herein that the buyer's agreement had been executed between the parties on 31.12.2018 (same as the date written in clause 7(a)) whereas there has been a typographical error in clause 7(a) "*the company shall offer possession of the unit on or before 31.12.2018*" rather it should have been 31.12.2019.
- v. It is submitted that at the time when buyer's agreement was dispatched to the respondents for execution, the project had been registered under the Act up till 31.12.2018. Subsequently, the period of registration was extended by RERA authority up till 31.12.2019. Thus, it is submitted that the respondent has offered possession of the said unit within the time period as extended by this authority and in any event within a period of 60 days from the date of issuance of the occupation certificate. Thus, there is no default or lapse insofar as the respondent is concerned. That as was noted above, the benefit of the force majeure circumstance that were beyond the control of the company and also resultant of

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various orders need to be noted in order to ascertain the extension of the due date.

- vi. That furthermore, 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 reason which was/is beyond the power and control of the respondent and hence the respondent cannot be held responsible for the same: (i) **Defaults of Contractor**, (ii) default caused by the complainants and other allottees in fulfilling its obligations, the respondent did not default and instead completed the construction of the project without having regular payment of monies by the allottees like the complainants.
- vii. That despite innumerable hardships being faced by the respondent, the respondent completed the construction of the project and applied for the occupation application vide an application dated 11.02.2019 before the concerned authority and successfully attained the occupation certificate dated 17.10.2019. That thereafter, and only after obtaining the requisite permissions, the respondent legally offered the interim possession for fit outs of the unit to the complainants on 11.11.2019. The complainants also took interim possession of the said unit by undertaking dated 31.12.2019 for carrying out fit. In the offer of interim possession the respondent clearly stated that all the due payments to be made and all required documents to be submitted by the complainants for the unit handover but, the complainants immensely failed in fulfilling their obligations

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of making all the due payments which resulted in delay in offering physical possession to the complainants.

- viii. Moreover, without accepting the contents of the complaint in any manner whatsoever, the *bonafide* conduct of the respondent has to be highlighted as the respondent has raised various credit memos: on account of anti-profiting amounting, subvention of credit memo of Gurgaon greens project and on account of EPR. The respondent gave credit memo maintenance on offer of possession of Rs. 1,50,000 and Rs. 13,79,744 on account of subvention and has also given multiple credit memos for rebate on GST. 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 principal 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 (dpc) or any taxes/statutory payments, etc.
- ix. Without prejudice to the rights of the respondent and without admitting to anything alleged in the complaint, in any manner whatsoever, it is most humbly submitted that the delayed possession interest, if any, has to be given after adjusting the amount of compensation (rs. 1,50,000) and interest of subvention plan (Rs. 13,79,744), i.e., a total amount of **Rs. 15,29,744** already given should be adjusted. That in order dated **04.02.2022**, **this authority noted in Satvinder Kumar Sachdeva v M/s Supertech Ltd & Ors Complaint No. 3770 of 2021: The amount of Pre-Emi's paid by the respondents/promoters in the account of complainant, if any, would be deducted while calculating the total amount due towards him.** That the

number of monies credited in lieu of subvention are in form of interest already credited and hence, is liable to be deducted.

- x. That in light of the *bona fide* conduct of the respondent, non-existence of cause of action and the frivolous complaint filed by the complainants, this complaint is bound to be dismissed with costs in favour of the respondent.
7. The preliminary objections raised by the respondent regarding jurisdiction of the authority to entertain the present complaint stands rejected. 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. 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 complainants at a later stage.

F. Findings on the objections raised by the respondent

F.I Objection regarding handing over possession as per declaration given under section 4(2)(I)(C) of the Act.

10. The respondent submitted that the respondent has duly fulfilled its obligation 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, i.e., before 31.12.2019.
11. Therefore, next question of determination is whether the respondent is entitled to avail the time given to him by the authority at the time of registering the project under section 3 & 4 of the Act. It is now settled law that the provisions of the Act and the rules are also applicable to ongoing project and the term ongoing project has been defined in rule 2(1)(o) of the rules. The new as well as the ongoing project are required to be registered under section 3 and section 4 of the Act.
12. Section 4(2)(I)(C) of the Act requires that while applying for registration of the real estate project, the promoter has to file a declaration under section 4(2)(I)(C) of the Act and the same is reproduced as under: -

Section 4: - Application for registration of real estate projects

(2)The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely: —

(1): -a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating: —

.....
(C) the time period within which he undertakes to complete the project or phase thereof, as the case may be....”

13. The time period for handing over the possession is committed by the builder as per the relevant clause of apartment buyer agreement and the commitment of the promoter regarding handing over of possession of the unit is taken accordingly. The new timeline indicated in respect of ongoing project by the promoter while making an application for registration of the project does not change the commitment of the promoter to hand over the possession by the due date as per the apartment buyer agreement. The new timeline as indicated by the promoter in the declaration under section 4(2)(1)(C) is now the new timeline as indicated by him for the completion of the project. Although, penal proceedings shall not be initiated against the builder for not meeting the committed due date of possession but now, if the promoter fails to complete the project in declared timeline, then he is liable for penal proceedings. The due date of possession as per the agreement remains unchanged and promoter is liable for the consequences and obligations arising out of failure in handing over possession by the due date as committed by him in the apartment buyer agreement and he is liable for the delayed possession charges as provided in proviso to section 18(1) of the Act. The same issue has been dealt by hon'ble Bombay High Court in case titled as **Neelkamal Realtors**



Suburban Pvt. Ltd. and anr. vs Union of India and ors. and has observed as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter..."

G. Findings on the reliefs sought by the complainants

14. **Relief sought by the complainants:** Direct the respondent to pay interest at the applicable rate on account of delay in offering possession on Rs.1,36,25,062/- paid by the complainants as sale consideration of the said flat from the date of payment till the date of delivery of possession.
15. In the present complaint, the complainants intend 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."

16. Clause 7(a) of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

"7. POSSESSION AND SALE DEED

Within 60 (sixty) days from the date of issuance of Occupation Certificate by the concerned Authorities, the Company shall offer the possession of the



*unit to the Allottee. Subject to Force Majeure and fulfillment by the Allottee of all the terms and conditions of this Agreement including but not limited to timely payment by the Allottee of the Total Price payable in accordance with Payment Plan Annexure-III, along with stamp duty, registration and incidental charges and other charges in connection thereto due and payable by the Allottee and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, **the Company shall offer the possession of the Unit to the Allottee on or before 31-12-2018.***

17. The authority has gone through the possession clause and observes that this is a matter very rare in nature where builder has specifically mentioned the date of handing over possession rather than specifying period from some specific happening of an event such as signing of apartment buyer agreement, commencement of construction, approval of building plan etc. This is a welcome step, and the authority appreciates such firm commitment by the promoter regarding handing over of possession but subject to observations of the authority given below.
18. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to providing necessary infrastructure specially road, sewer & water in the sector by the government, but subject to force majeure conditions or any government/regulatory authority's action, inaction or omission and reason beyond the control of the seller. 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 making payment as per the plan may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause



in the agreement to sell by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his 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.

19. 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.

20. 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.

21. 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

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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%.

22. **Rate of interest to be paid by complainants/allottees 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;"*

23. Therefore, interest on the delay payments from the complainants 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 complainants in case of delayed possession charges.

24. 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 7(a) of the buyer's agreement

executed between the parties on 31.12.2018. Therefore, the due date of handing over possession is 31.12.2018. In the present case, the complainants were offered possession by the respondent on 11.11.2019 after obtaining occupation certificate dated 17.10.2019 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 complainants as per the terms and conditions of the buyer's agreement dated 31.12.2018 executed between the parties.

25. 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 17.10.2019. However, the respondent offered the possession of the unit in question to the complainants only on 11.11.2019, so it can be said that the complainants 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 complainants 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

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the due date of possession i.e. 31.12.2018 till the expiry of 2 months from the date of offer of possession (11.11.2019) which comes out to be 11.01.2020. Also, the complainants are directed to settle the accounts with the respondent and to pay statutory dues and get the conveyance deed executed as per section 19(11) of the Act, 2016 as physical possession of unit has already been taken by the complainant.

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 complainants are entitled to delay possession charges at prescribed rate of the interest @ 10.35 % p.a. w.e.f. 31.12.2018 till 11.01.2020 i.e., expiry of 2 months from the date of offer of possession (11.11.2019) as per provisions of section 18(1) of the Act read with rule 15 of the rules.

26. The amount of compensation already paid to the complainants by the respondent as delayed compensation in terms of the buyer's agreement shall be adjusted towards delay possession charges payable by the promoter at the prescribed rate of interest to be paid by the respondent as per the proviso to section 18(1) of the Act.

H. Directions of the authority

27. 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):

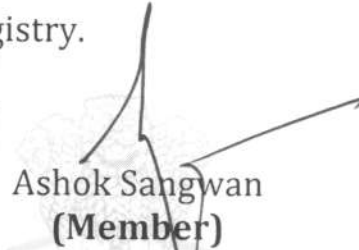
- i. The respondent is directed to pay the interest at the prescribed rate i.e. 10.35 % per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 31.12.2018 till 11.01.2020 i.e. expiry of 2 months from the date of offer of possession (11.11.2019). The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per rule 16(2) of the rules.
- ii. The rate of interest chargeable from the complainants/allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.35% 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 complainants are directed to settle the accounts with the respondent and to pay statutory dues and get the conveyance deed executed as per section 19(11) of the Act.
- iv. The amount of compensation already paid to the complainants by the respondent as delayed compensation in terms of the buyer's agreement shall be adjusted towards delay possession charges payable by the promoter at the prescribed rate of interest to be paid by the respondent as per the proviso to section 18(1) of the Act.
- v. The respondent shall not levy/recover any charges from the complainants which is not the part of the buyer's agreement. The



respondent is also not entitled to claim holding charges from the complainants/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.

28. Complaint stands disposed of.
29. File be consigned to registry.


Sanjeev Kumar Arora
(Member)


Ashok Sangwan
(Member)


Vijay Kumar Goyal
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.11.2022

