

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

Complaint no. : 3961 of 2021
Date of first hearing: 25.11.2021
Date of decision: 22.02.2023

Sunita Satija
R/o: - 685/21, Heera Nagar, Gurugram

Complainant

Versus

M/s RMG Developers Private Limited.
Regd. Office at: Khasra No. 300, Gopi Ram Building,
Sultanpur Village, New Delhi- 110030

Respondent

CORAM:
Shri Ashok Sangwan

Member

APPEARANCE:
Ms. Rajan Kumar Hans (Advocate)
None

Complainant
Respondent

EX-Parte Order

1. This complain has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Project name and location	"RMG Residency", Sector 37C, Gurugram
2.	Project area	5 acres
3.	Nature of the project	Affordable Group Housing Colony
4.	DTCP license no. and validity status	12 of 2015 dated 09.10.2015 valid up to 08.10.2020
5.	Name of licensee	RMG Developers Pvt. Ltd.
6.	RERA Registered/ not registered	Registered vide no. 206 of 2017 dated 15.09.2017
7.	RERA registration valid up to	31.12.2019
8.	Date of approval of building plan	21.12.2015 [As per information obtained by the planning branch]
9.	Date of approval of environment clearance	31.01.2017 [As per information obtained by the planning branch]
10.	Unit no.	106, first floor, tower- 4, block- A [Page no. 17 of the complaint]
11.	Unit measuring	441.320 sq. ft. [Carpet area]



		68.197 sq. ft. [Balcony area]
12.	Date of execution of apartment buyer agreement	21.02.2017 [Page 16 of complaint]
13.	Possession clause	3.1 Possession <i>"Subject to force majeure circumstances, intervention of statutory authorities, receipt of occupation certificate and allottee(s) having timely complied with all its obligations, formalities or documentation, as per prescribed by the Developer and not being in default under any part hereof and apartments buyer's agreements, including but not limited to the timely payment of installments of the other charges as per the payment plan, stamp duty and registration charges, the developer proposes to offer of possession of the said apartment to the allottee(s) within 4 (four) years from the date of approval of building plans or grant of environment clearance whichever is later."</i> (Page no. 20 of the complaint).
14.	Due date of possession	31.07.2021 [Note: - Calculated from date of environment clearance i.e.,

		31.01.2017, which comes out to be 31.01.2021 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020.
15.	Payment plan	Time linked payment plan. [As per payment plan at page no. 28 of complaint]
16.	Total consideration	Rs.17,99,379/- [As per payment plan at page no. 28 of complaint]
17.	Total amount paid by the complainant	Rs.19,06,807/- [as per statement of account at page no. 36 of complaint]
18.	Occupation certificate /Completion certificate	Not received
19.	Offer of possession	Not offered
20.	Delay in handing over the possession till date of this order i.e., 22.02.2023	1 year 6months and 22 days

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That in the year 2016, the complainant got information about an advertisement in a local newspaper about the affordable housing project “**RMG Residency**” at Sector 37-C, Gurugram, (Haryana). When she called on the phone number provided in the newspaper,

the marketing staff of the respondent showed a rosy picture of the project and allured with proposed specifications and invited her for the site visit. The complainant visited the project site and met with the local staff of respondent, and they gave an application form and assured that possession would be delivered within 36 months as they were told that it is a government project having fixed payment installment in every 6 months and on the last installment, the possession would be delivered.

- II. That the complainant applied for a 1 BHK residential unit in an upcoming project of respondent namely "RMG Residency" at Sector 37-C, Gurugram, (Haryana), for which she remitted Rs.89,969/- towards booking the unit dated 14.09.2016, along with application form. The respondent acknowledged the payment. The complainant got the unit in the draw of lots held on date 23.12.2016.
- III. That on date 21.02.2017, a pre-printed one-sided, arbitrary, and unilateral flat buyer agreement for allotted unit/flat was executed between the parties. As per clause 3.1, the respondent had to complete the construction of the flat and hand over its possession within 4 years from the date of grant of sanction of building plans for the project or the date of receipt of all the environmental clearances. This was as per rule 1. (iv) under the Affordable Housing Policy 2013, notified by DTCP, Government of Haryana on date 19.08.2013 in the Haryana Government Gazette. The building



plan of the project was approved on 02.12.2015 and the environmental clearance was granted on 28.09.2016. Therefore, the due date of possession becomes on or before 28.09.2020.

- IV. That till date, the complainant has paid Rs.19,06,807/- i.e., over 100% of money called. She observed that there was slow progress in the construction of subject flat for a long time and raised the grievance to respondent.
- V. That the respondent charged the complainant an interest of Rs.77,082/- on the Delayed payment (at the rate of 10% p.a.) which should have been 9.3% p.a. as per the prevailing SBI rate of interest.
- VI. That the main grievance of the complainant is that in spite she has paid 100% of the actual amounts of flat, the respondent has failed to deliver its possession on time which was a core promise of Affordable Housing Policy, 2013.
- VII. That the other grievance of the complainant is that the respondent is offering the fit-out possession and not the legal possession and is charging the extra charges of Rs.1,40,000/- which is illegal as per the scheme of AHP.
- VIII. That the respondent is not providing GST input credit though it has charged a hefty amount of Rs.97,554/- as the GST from the complainant.
- IX. That the complainant had purchased the flat with the intention that after purchase, her family would use it for personal use. It was



promised by it at the time of receiving payment that the possession of fully constructed flat as shown in newspaper at the time of sale, would be handed over to the complainant on and after the payment of last and final installment. The installment accrued on every 6 months after the commencement of construction work, and the respondent was under an obligation to deliver the project complete in all respect. The respondent took the last installment or by the maximum till 28.09.2020 (as per flat buyer agreement and Affordable Housing Policy, the possession of flat need to be given within 48 months from the date of approval of building plans or from the date of environmental clearance whichever is Later).

- X. That the facts and circumstances as enumerated above would lead to the only conclusion that there is a deficiency of service on the part of the respondent and as such, is liable to be punished and compensate the complainant.
- XI. That the DTCP, Haryana is also liable for the negligence to monitor the progress of the project as in the case of affordable housing, the Government/DTCP Department plays an active role. When the respondent has miserably failed to complete the structure as per the schedule specified in builder buyer's agreement and as per the Haryana Affordable Housing Policy 2013 (i.e. 4 years from the date of grant of building approvals or from the date of grant of environmental Clearance, which is later), by Town and Country Planning Department. It has been more than 1 year since the DTCP

has failed to take any action against respondent regarding it to hand over the possession to allottees.

XII. That the cause of action for the present complaint arose on 21.02.2017, when a one-sided, arbitrary and unilateral flat buyer agreement was executed between the parties, and on 22.07.2021, when the complainant paid the last installment. Further, the cause of action arose on 28.09.2016, when the respondent failed to hand over the possession of the flat as per the buyer's agreement. Further, the cause of action again arose on various occasions, including on a) 27.01.2020, and on many times till date, when the protests were lodged with the respondent about its failure to deliver the project. The cause of action is alive and continuing and would continue to subsist till such time as this authority restrains the respondent by an order of injunction and/or passes the necessary orders.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - i. Direct the respondent to pay interest at the prescribed rate on delayed possession since the due date of possession till date of actual legal possession.
 - ii. The respondent may kindly be directed to complete and seek necessary governmental clearances regarding infrastructural and other facilities including road, water, sewerage, electricity, environmental, etc. before handing over the physical possession of the flats.

- iii. The respondent may kindly be directed to not charge any extra amount over and above of that mentioned in the builder buyer's agreement.
 - iv. Direct the respondent to provide the input credit of GST to the complainant.
5. The authority issued a notice dated 23.10.2021 of the complaint to the respondent by speed post and also on the given email address at rmg@gmail.com. The delivery reports have been placed in the file. Thereafter, a reminder notice dated 25.03.2022 for filing reply was sent to the respondent on email address at rmg@gmail.com. Despite service of notice, the respondent has preferred neither to put in appearance nor to file reply to the complaint within the stipulated period. Accordingly, the authority was left with no other option to proceed ex parte proceeding dated 21.04.2022 against the respondent.
6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the complainant.

D. Jurisdiction of the authority

7. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.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 Haryana Real Estate Regulatory Authority, Gurugram shall be entire



Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

D.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;

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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

E. Findings on the relief sought by the complainant

- E. I Direct the respondent to pay interest at the prescribed rate on delayed possession since the due date of possession till date of actual legal possession.**



11. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

12. As per clause 3.1 of the apartment buyer's agreement provides for handing over of possession and is reproduced below:

3. POSSESSION

3.1 "Subject to force majeure circumstances, intervention of statutory authorities, receipt of occupation certificate and allottee(s) having timely complied with all its obligations, formalities or documentation, as per prescribed by the Developer and not being in default under any part hereof and apartments buyer's agreements, including but not limited to the timely payment of installments of the other charges as per the payment plan, stamp duty and registration charges, the developer proposes to offer of possession of the said apartment to the allottee(s) within 4 (four) years from the date of approval of building plans or grant of environment clearance whichever is later"

13. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to timely payment and all kinds of terms and conditions of this agreement and application, 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 date for handing over possession loses its meaning. The incorporation of such clause in the buyer developer agreement 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.

14. Payment of delay possession charges at prescribed rate of interest:

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.

15. 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.

16. 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., 22.02.2023 is **8.70%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.70%**.

17. The definition of term 'interest' as defined under section 2(z) 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:

"(z) "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;"*

18. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., **10.70%** by the respondent /promoter which is the same as is being granted her in case of delayed possession charges.

19. On consideration of the circumstances, the documents, submissions made and based on the findings of the authority regarding



contravention as per provisions of rule 28(2), the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 3.1 of the apartment buyer agreement executed between the parties on 21.02.2017, the possession of the subject apartment was to be delivered within a period of 4 (four) years from the date of approval of building plans i.e., 21.12.2015 or grant of environment clearance i.e., 31.01.2017 whichever is earlier, further a grace period of 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for project having completion date on or after 25.03.2020. Therefore, the due date of handing over possession comes out to be 31.07.2021. The respondent has failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent/ promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainant as per the terms and conditions of the apartment buyer's agreement dated 21.02.2017 executed between the parties. Further, no OC/part OC has been granted to the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottee.

20. 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 is entitled to delay possession charges at rate of the prescribed interest @ 10.70% p.a. w.e.f. 31.07.2021 till the handing over of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

E. II The respondent party may kindly be directed to complete and seek necessary governmental clearances regarding infrastructural and other facilities including road, water, sewerage, electricity, environmental, etc. before handing over the physical possession of the flats.

21. OC/CC is a certificate obtained from the competent authority is a proof of completion of basic amenities such as road, water sewage, electricity etc. There is nothing on record the respondent has applied for obtaining occupation certificate from the competent authority. The respondent/promoter is further directed to issue offer of possession after obtaining the occupation certificate of the project from the competent authority.

E.III. The respondent party may kindly be directed to not charge any extra amount over and above of that mentioned in the builder buyer's agreement.

22. The respondent shall not charge anything which is not part of apartment buyer's agreement.

E. IV. Direct the respondent to provide the input credit of GST to the complainant

23. In this context, the attention of the authority was drawn to the fact that the legislature while framing the GST law specifically provided for anti-profiteering measures as a check and to maintain the balance in the inflation of cost on the product/services due to change in migration to a new tax regime i.e. GST, by incorporating section 171 in Central Goods and Services Tax Act, 2017/ Haryana Goods and Services Tax Act, 2017, the same is reproduced herein below:

“Section 171. (1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.”

24. The intention of the legislature is amply clear that the benefit of tax reduction or ‘Input Tax Credit’ is required to be passed onto the customers in view of section 171 of HGST/CGST Act, 2017. As per the above said provisions of the Act, it is mandatory for the respondent to pass on the benefits of ‘Input Tax Credit’ by way of commensurate reduction in price of the flat/unit. Accordingly, respondent should reduce the price of the unit/consideration to be realized from the buyer of the flats commensurate with the benefit of ITC received by him. The promoter shall submit the benefit given to the allottee as per section 171 of the HGST Act, 2017.
25. The builder has to pass the benefit of input tax credit to the buyer. In the event, the respondent-promoter has not passed the benefit of ITC to the buyer of the unit, then it is in contravention to the provisions of section 171(1) of the HGST Act, 2017 and has thus committed an offence as per the provisions of section 171 (3A) of the above Act. The allottee shall be at liberty to approach the State Screening Committee Haryana for initiating proceedings under section 171 of the HGST Act against the respondent-promoter. The concerned SGST Commissioner is advised to take necessary action to ensure that the benefit of ITC is passed on to the allottee in future.

F. Directions of the authority

26. 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 interest at the prescribed rate of 10.70% p.a. for every month of delay from the due date of possession i.e., 31.07.2021 till actual handing over of possession or offer of possession plus two months, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period;
- iii. The arrears of such interest accrued from 31.07.2021 till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules;
- iv. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.70% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.



- v. The respondent shall not charge anything from the complainant which is not the part of the apartment buyer agreement.

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

Dated: 22.02.2023


(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram



HARERA
GURUGRAM