



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

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| Complaint no. : | 134 of 2023 |
| Date of filing complaint: | 17.01.2023 |
| Order Reserve On: | 05.07.2023 |
| Order Pronounced On: | 16.08.2023 |

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| Manoj Gandhi R/O: 4/30, Ramesh Nagar, Delhi-110015 | Complainant |
| Versus | |
| M/s Imperia Structures Ltd. Office: A-25, MCIE, Mathura Road, New Delhi-110057 | Respondent |

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| CORAM: | |
| Shri Ashok Sangwan | Member |
| APPEARANCE: | |
| None | Complainant |
| Shri Roopam Sharma (Advocate) | Respondent |

ORDER

1. The present complaint 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 there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details



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

| S. N. | Particulars | Details |
|-------|------------------------------------|--|
| 1. | Name and location of the project | "Mindspace" at sector 62, Golf Course Road, Gurgaon, Haryana |
| 2. | Nature of the project | IT Park Colony |
| 3. | Project area | 8.35625 acres |
| 4. | DTCP license no. | 86 of 2010 dated 23.10.2010 valid upto 22.10.2020 |
| 5. | Name of licensee | Baakir Real Estate Pvt. Ltd. and others |
| 6. | RERA Registered/ not registered | Registered 240 of 2017 dated 25.09.2017 valid upto 31.12.2020 |
| 7. | Unit no. | Virtual Space, 61 6 th floor, Tower A (page no. 31 of complaint) |
| 8. | Unit area admeasuring (super area) | 500 sq. ft. (page no. 31 of complaint) |
| 9. | Date of buyer's agreement | 13.05.2016 (page no. 21 of complaint) |
| 10. | Due date of possession | 13.05.2019 (Taken as 3 years from the date of buyer's agreement as possession clause is not clear) |
| 11. | Possession clause | 12.Handing Over Possession That the Allottee shall be handed over possession of the unit from the company |



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|-----|--------------------------------|---|
| | | only after the allottee has fully discharged all his obligations and entire Total Price against the Unit has been paid and all other applicable charges/dues/taxes of the Allottee have been paid and Conveyance Deed has been executed and registered in his favour. The company shall handover possession of the Unit to the Allottee is not in default of any of the terms and conditions of this agreement and has complied with all provision, formalities, documentation etc. |
| 13. | Total sale consideration | Rs. 30,78,691/- (as per SOA on page no. 60 of complaint) |
| 14. | Amount paid by the complainant | Rs. 30,82,873/- (as per SOA on page no. 60 of complaint) |
| 15. | Occupation certificate | Not obtained |
| 16. | Offer of possession | Not offered |

B. Facts of the complaint:

3. That the respondent announced the launch of their project by the name of "MindSpace", and thereby, invited applications from prospective buyers for the purchase of units in the said project. The complainant being lured by the sales representatives of the respondent to buy a unit in their project, booked a unit in the said project and opted for a construction linked payment plan.
4. That at the time of initial booking the complainant made a payment of Rs. 2,50,000/- on 29.07.2011 vide cheque. The complainant on 12.09.2011 made another payment of Rs. 2,62,875/- and Rs. 2,60,876/- respectively.



5. That the respondent took more than 30% of the total sale consideration prior to the commencement of the builder buyer agreement which is the clear violation of section 13(1) of Real Estate Regulation and Development Act, 2016.
6. That the respondent on 13.05.2016 entered into an agreement with complainant against the allotted unit. Thereafter, the complainant made payments as per demanded by the respondent. The complainant till now has paid Rs. 30,82,873/- which is more than 100% of the total sale consideration of the unit i.e., Rs.25,00,000/- as per the agreement.
7. That even after paying more than 100% of the total sale consideration and after a long wait in the hope to get a unit from their hard-earned money. The respondent kept on making false assurances to the complainant.
8. That after losing all hope from the respondent company in terms of getting the interest on the delay in delivery period of more than 10 years from the due date of delivery of possession, and also losing considerable amount of money the complainant is constrained to approach this Hon'ble Authority for delay on possession charges.

C. Relief sought by the complainant:

9. The complainant has sought following relief(s):
 - (i) Direct the respondent to handover the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of the possession for certain unwanted reasons.
 - (ii) Direct the respondent to pay the interest on the total amount paid by the complainant at the prescribed rate of interest from due date of possession till actual date of physical possession.



D. Reply by respondent/promoter:

The respondent/promoter by way of written reply made following submissions:

10. That the complainant at their own will, booked a unit on 29.07.2011, in our project 'Imperia Byron', which was subsequently renamed as 'Mindspace', located at sector 62, Gurugram, for a total sale consideration of Rs. 32,87,783/- . The complainant was allotted a unit no. A 5th Floor, 049 for a construction linked payment plan.
11. That the construction of the said project was completed way back in 2019 and the occupancy certificate was applied for. The occupancy certificate has been received on 02.06.2020 by the respondent company.
12. That the complainant is misleading this hon'ble authority and hiding the fact that the respondent company has time and again issued offers of possession and demand notices to the complainant. it is submitted that an offer of possession for fit- out was issued by the respondent company to the complainant at the time of anticipation of the occupancy certificate.
13. That the complainant has been concealing the fact that he is at default in the said case. The respondent company had also issued a demand letter dated 12.12.2022 to the complainant calling upon the complainant to pay outstanding amount of maintenance charges and upkeep charges, which have been accruing from the date of procurement of occupancy certificate, however the same have gone unacknowledged by the complainant and the respondent has not received any outstanding charges yet.



14. That the State Government had acquired the land which comprises the said project land and transferred the same to the respondent company, for development of the said project in accordance with its master plan and then it had carved out various sectors and plots therein. In pursuance to this, the respondent company started construction over the said project land, after obtaining all sanctions/approvals/clearances necessary / clearances from different state/central agencies/authorities. The respondent company received initial approval of building plans on 4 of December, 2015, and started the milestone Construction of the present project.
15. That subsequent to receiving the building plans, as mentioned above, the respondent company started the construction and also began allotting units to the concerned allottees. Furthermore, the respondent company on certain recommendation changed the name of the project from the 'Imperia Byron' to 'Imperia Mindspace'.
16. That the complainant is investor, who has made investment in the esteemed project namely "Imperia Byron", now "Imperia Mindspace", located at sector 62 Gurgaon Haryana. Accordingly, all parties had executed memorandum of understanding. The complainant had purchased the unit for a basic consideration of Rs. 32,87,783/- along with charges of reserved car parking and other charges shall be paid by the complainant at the time of handing over possession of unit.
17. That the complainant has not revealed this fact that he had delayed and defaulted in making payment towards the unit, time and again and the same left the respondent company with no choice but to issue a letter for cancellation of unit. However, despite the inordinate delays and defaults on behalf of the respondent the respondent company reinstate the allotment of complainant and issued him offer of possession for fit



- out. That after pandemic, the working protocols of the IT sector has transformed into work-from-home, due to which the real estate has immensely suffered and despite of which, the respondent company is adhering to the promises.
18. That the respondent company directs all the payments received from the allottees, towards the construction of the undertaken project and thus, default in depositing the payment by the allottees disrupts the construction speed and hinders the completion of the committed project, which eventually affects the delivery of the project to allottees. That despite of several hindrances and certain force majeure, such as recent COVID-19 pandemic, the respondent company has successfully procured the occupancy certificate dated 02.06.2020, which exhibits the bona fide intention of the respondent company to complete the project.
19. That owing to unprecedented air pollution levels in Delhi NCR, the Hon'ble Supreme Court issued a ban on construction activities in the region from November 4, 2019 onwards, which was a blow to realty developers in the city. The Air Quality Index (AQI) at the time was running above 900, which is considered severely unsafe for the city dwellers. In pursuance to the Central Pollution Control Board (CPCB) declaring the AQI levels as not severe, the SC lifted the ban conditionally on December 9, 2019, allowing construction activities to be carried out between 6 a.m. and 6 p.m., and the complete ban was lifted by the Hon'ble Supreme Court on 14th February, 2020.
20. That clause 27 of the said MOU states that if the dispute or difference shall arise between the parties, the same shall be referred for arbitration proceedings.

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21. That the complainant is at default as the complainant dishonored the terms of builder buyer agreement dated 13.05.2016 and failed to pay the demands of respondent within time. The complainant failed to make the payment a demanded vide offer of fit out possession dated 10.08.2019 and a lumpsum of Rs. 2,04,910 is still pending to be paid by the complainant towards the consideration of said unit.
22. That the respondent company has duly honored its part of the obligations without any delay, however, the complainant is attempting to extort the respondent company to earn unreasonable profit and commercial gain at the cost of the respondent company. No cause of action has arisen in favor of the complainant to file this present complaint.
23. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and written submissions made by the parties and who reiterated their earlier version as set up in the pleadings.

E. Jurisdiction of the authority:

24. The authority has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

25. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram



district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

26. 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.

27. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the objections raised by the respondent/promoter:

F.I Objection regarding force majeure conditions:

28. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as orders of the Supreme Court regarding ban on construction activities and Covid -19 but all the pleas advanced in this regard are devoid of



merit. First of all, the possession of the unit in question was to be offered by 13.05.2019. Hence, events alleged by the respondent do not have any impact on the project being developed by the respondent. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

29. Further in the judgement of the Hon'ble Supreme Court of India in the cases of Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) RCR (c), 357 reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022. it was observed

25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed

30. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a).

G. Finding on the relief sought by the complainant:



- (i) Direct the respondent to handover the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of the possession for certain unwanted reasons.
- (ii) Direct the respondent to pay the interest on the total amount paid by the complainant at the prescribed rate of interest from due date of possession till actual date of physical possession.
31. 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."

32. The apartment buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builders/promoters and buyers/allottee are protected candidly. The apartment buyer's agreement lays down the terms that govern the sale of different kinds of properties like residentials, commercials etc. between the buyer and builder. It is in the interest of both the parties to have a well-drafted apartment buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the apartment, plot or



building, as the case may be and the right of the buyer/allottee in case of delay in possession of the unit.

33. In the present matter buyer's agreement has been executed on 13.05.2016 between the parties. The clause 12 of the buyer's provided for the handing over of possession however the said clause is in unambiguous language and does not provide the stipulated time period for handing over of possession. Therefore, the due date of possession cannot be ascertained. A considerate view has already been taken by the Hon'ble Supreme Court in the cases where due date of possession cannot be ascertained then a reasonable time period of 3 years has to be taken into consideration. It was held in matter **Fortune Infrastructure v. Trevor d' lima (2018) 5 SCC 442 : (2018) 3 SCC (civ) 1** and then was reiterated in **Pioneer Urban land & Infrastructure Ltd. V. Govindan Raghavan (2019) SC 725 -:**

"Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to be given by last quarter of 2014. Further there is no dispute as to the fact that until now there is no redevelopment of the property. Hence, in view of the above discussion, which draw us to an irresistible conclusion that there is deficiency of service on the part of the appellants and accordingly the issue is answered."

34. Accordingly, the due date of possession is calculated as 3 years from the date of buyer's agreement i.e., 13.05.2016. Therefore, the due date of possession comes out to be 13.05.2019.
35. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges, 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.

36. 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.
37. 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., 16.08.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75% per annum.
38. The definition of term 'interest' as defined under section 2(z a) 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;"*

39. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.75% p.a. by the respondent/promoter which is the same as is being granted to the complainant in case of delay possession charges.

40. On consideration of the circumstances, the evidence and other record and submissions made by the parties, 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. Accordingly, non-compliance of the mandate contained in section 11(4) (a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to delayed possession charges at the prescribed rate of interest i.e., 10.75% p.a. for every month of delay on the amount paid by them to the respondent from the due date of possession i.e., 13.05.2019 till the offer of possession of the subject unit after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier as per the provisions of section 18(1) of the Act read with rule 15 of the rules.

H. Directions of the Authority:

41. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of



obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondent/promoter is directed to pay interest at the prescribed rate of 10.75% p.a. for every month of delay from the due date of possession i.e., 13.05.2019 till the offer of possession of the subject unit after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier.
- ii) The respondent/promoter is directed to pay arrears of interest accrued within 90 days from the date of order and thereafter monthly payment of interest to be paid till date of handing over of possession shall be paid on or before the 10th of each succeeding month.
- iii) The complainant is also directed to pay the outstanding dues, if any.
- iv) The respondent/promoter shall not charge anything from the complainant which is not part of the builder buyer agreement.

42. Complaint stands disposed of.

43. File be consigned to the registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.08.2023