

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

Complaint no.:	2116 of 2022
First date of hearing:	07.09.2022
Date of decision:	25.08.2023

1. Mr. Anil Rawat  
2. Mrs. Mona Rawat  
**R/o** RZF,775/19, Gali no. 15, Sector 8 Dwarka, Raj  
Nagar-2 Extension, Southwest Delhi-110077

**Complainants**

Versus

M/s JMK Holding Pvt. Ltd.  
**Office address:** 1302, 13<sup>th</sup> floor, Dr. Gopal Das Bhawan,  
28 Barakhamba Road, Cannaught Place, New Delhi-  
110001.

**Respondent**

**CORAM:**

Shri Sanjeev Kumar Arora

**Member**

**APPEARANCE:**

Mr. Garvit Gupta (Advocate)  
Mr. Neeraj Kumar (Advocate) & Shri Mintu Kumar (AR  
of respondent)

Complainants

Respondent

**ORDER**

1. The present complaint dated 25.05.2022 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is

*inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions as provided 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 unit details, 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:

S.N.	Particulars	Details
1.	Name of the project	"Grandiva", Sector 103, Gurugram
2.	Nature of project	Affordable Group Housing Colony
3.	Licensed area	9 acres
4.	DTPC License no.	157 of 2014 dated 11.09.2014 and valid up to 05.05.2021
	Name of licensee	JMK Holdings Pvt. Ltd.
5.	HARERA Registration no.	Registered 13 of 2017 dated 03.07.2017 and valid up to 28.03.2021
6.	Unit no.	Flat no. 4-003, 2BHK (Type A), ground floor. [pg. 24 of the complaint]
7.	Carpet area	605.09 sq. ft. Balcony area- 94.94 sq. ft. [pg. 24 of the complaint]
8.	Date of allotment	30.05.2016 [pg. 24 of the complaint]
9.	Date of buyer's agreement	07.07.2016 [pg. 24 of the complaint]



10.	Approval of building plans	11.05.2016 [As per the details provided by the planning branch of the authority]
11.	Environment clearance	29.09.2016 [As per the details provided by the planning branch of the authority]
12.	Possession Clause	<p><i>In absence of execution of the agreement under Affordable housing project, the possession clause given under the Affordable Housing Policy 2013 would prevail. Section 1 (iv) of Affordable housing policy 2013 which provides as under:</i></p> <p><b>Section 1 (iv)</b></p> <p><i>All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the date of commencement of project" for the purpose of this policy. The license shall not be renewed beyond the said 4 years period from the date of commencement of project.</i></p> <p><i>(Emphasis supplied)</i></p>
13.	Due date of possession	29.03.2021 [Calculated from the date of environmental clearance + 6-month grace period as per RERA notification 3 of 2020 on account of COVID-19]
14.	Total sale consideration	₹ 25,26,973/- [As per customer ledger dated 26.05.2021 at page 48 of the complaint]
15.	Amount paid by the complainants	Rs. 24,67,830/- [As per CD dated 08.09.2021 at page 52 of the complaint]
16.	Occupation certificate	20.04.2021 [as alleged by the respondent at page 2 of the reply] License no. mentioned in sample BBA is different from license no. in the copy of



		occupation certificate attached by the respondent
17.	Offer of possession	27.05.2021 [pg. 50 of the complaint]
18.	Conveyance deed	08.09.2021 [pg. 53 of the complaint]

**B. Facts of the complaint**

3. The complainants have pleaded the complaint on the following facts:

a. That the respondent offered for sale units in an affordable group housing colony known as 'Grand IVA' which claimed to comprise of several building/towers consisting of self-contained independent flats along with common support infrastructure, parking sites and community buildings on a piece and parcel of land admeasuring 9 acres situated in sector 103, Village Daultabad, Gurugram, Haryana. The respondent also claimed that the DTCP, Haryana had granted license bearing no. 157 of 2014 for development of affordable group housing colony in accordance with the provisions of the Affordable Housing Policy, 2013.

b. That the complainants received a marketing call from the office of respondent in the month of November 2015 for booking in the project of the respondent. The complainants had also been attracted towards the aforesaid project on account of publicity given by the respondent through various means like various brochures, posters, advertisements etc. The complainants visited the sales gallery and consulted with the marketing staff of the respondent. The marketing staff of the respondent painted a very rosy picture of the project and made several representations with respect to the innumerable world class facilities at low cost to be provided by the respondent in their

project. The marketing staff of the respondent also assured timely delivery of the unit.

- c. That the complainants, induced by the assurances and representations made by the respondent, decided to book a residential unit in the project of the respondent as the complainants required the same in a time bound manner for their own use and occupation and of their family members. This fact was also specifically brought to the knowledge of the officials of the respondent who confirmed that the possession of the apartment to be allotted to the complainants would be positively handed over within the agreed time frame, if a unit is allotted to them as per the draw of lots. The complainants signed several blank and printed papers at the instance of the respondent who obtained the same on the ground that the same were required for completing the booking formalities. The complainants were not given chance to read or understand the said documents and they signed and completed the formalities as desired by the respondent. The complainants applied for a unit in the project of the respondent vide application no. 14113 on 14.12.2015. It is pertinent to mention herein that as per the requirements of the respondent, the complainants also made the part-payment of ₹ 1,26,619/- to the respondent for booking of the unit.
- d. That pursuant to the application of the complainants, a draw was held on 25.05.2016 and the respondent vide allotment letter dated 30.05.2016 allotted unit no. 003 in Block/ Tower A for total sale consideration of ₹ 24,67,832/- having carpet area of 605.09 sq. Ft. The total sale consideration was inclusive of EDC/IDC charges and a



two-wheeler parking charge. The said consideration was calculated on the basis of carpet area together with the cost of providing common facilities in the project.

- e. That the complainants made vocal objections to the arbitrary and unilateral clauses of the apartment buyer's agreement to the respondent. It is pertinent to mention herein that prior to the signing of the agreement, complainants had made payment of ₹ 6,44,722/- out of the total sale consideration of ₹ 24,67,832/-. Since the complainants had already parted with a considerable amount of 26% of the sale consideration, they were left with no other option but to accept the lopsided and one-sided terms of the apartment buyer's agreement. The complainants felt trapped and had no other option but to sign the dotted lines. Hence the apartment buyer agreement dated 07.07.2016 was executed.
- f. That vide letter dated 27.05.2021, the respondent offered the possession of the unit to the complainants and requested them to make the balance payment and complete the documentation formalities. Accordingly, the complainants made the payment of the demanded amount of ₹ 66,000/- along with stamp duty charges of ₹ 1,48,100/- and registration charges of ₹ 12,510/ as well as CAM charges of ₹ 28,703/-.
- g. That the conveyance deed of the unit in question was executed and registered in the favor of the complainants on 08.09.2021. However, it is pertinent to mention herein that the respondent failed to offer the possession of the unit to the complainants despite the payment of the entire sale consideration including the registration charges and despite the execution of conveyance deed.

h. That there has been deliberate lethargy, negligence, and unfair trade practice by the respondent. The high headedness of the respondent is an illustration of how the respondent conducts its business which is only to maximize the profits with no concern towards the buyers. Vide possession certificate dated 27.10.2021, the respondent handed over the possession of the unit to the complainants. There has been a delay of more than 2 years in handing over of the possession.

**C. Relief sought by the complainants:**

4. The complainants have sought following reliefs:

a. Direct the respondent to pay delay possession charges at prescribed rate of interest from the due date of possession till the actual date of handing over 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 to plead guilty or not to plead guilty.

**D. Reply filed by the respondent.**

6. The respondent has contested the complaint on the following grounds:

a. That the complaint had applied for allotment of flat under the Affordable Housing Policy 2013 wherein allotment was made on 30.05.2016.

b. That the allotment was subject to payment schedule which is time linked and independent of status of the constructions.

c. That the approval of the Directorate of Town & Country Planning was received vide approval dated.11.05.2016 while the environment clearance was received vide approval dated 29.09.2016.

- d. That the occupancy certificate for the building was received on 20.04.2021 and accordingly offer of possession was made to the complainant.
- e. That the possession of the flat was subject to force majeure events, and it is respectfully submitted the project has been delayed on account of force majeure circumstances which was beyond the control of the respondent. It is submitted that the project has been delayed on account of following force majeure events:
- i. The novel coronavirus had been declared as a pandemic by World Health Organization. Following the declaration of the World Health Organization, the Ministry of Home Affairs, Government of India vide notification 40-3/2020-DM-I(A) dated 24.03.2020 under the Disaster Management Act, 2005, had imposed lockdown for whole of India for 21 days with effect from 25.03.2020.
  - ii. That further Ministry of Finance vide office memorandum no. F-18/4/2020-PPD dated 13.05.2020 recognized that given the restriction placed on the goods, services and manpower on account of the lockdown situation prevailing overseas and in the country in terms of the guidelines issued by the MHA under the DM Act 2005.
  - iii. That it is respectfully submitted to the Hon'ble Haryana Real Estate Regulatory Authority vide order no.9/3-2020 HARERA/GGM (Admn.) dated 26.05.2020 extended the date of completion for all Real Estate Projects registered under Real Estate Regulation and Development Act, where completion date, revised completion date or extended completion date was to



expire on or after 25<sup>th</sup> of March, 2020 automatically by 6 months, due to outbreak of the COVID -19.

7. Copies of all the documents have been filed and placed on record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.

**E. Jurisdiction of the authority**

8. 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**

9. 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**

10. 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)**

**Section 11**

.....

(4) The promoter shall-

(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.*

11. 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 complainants at a later stage.

**F. Findings on the relief sought by the complainants.**

**F.I. Direct the respondent to pay delay possession charges at prescribed rate of interest from the due date of possession till the actual date of handing over of possession.**

12. In the present complaint, the complainants intend to continue with the project and is seeking delay possession charges interest on the amount paid. 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.

***"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 3.1 of the flat buyer agreement provides for handing over of possession and is reproduced below: -

**3.1. POSSESSION**



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

14. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoters. 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 promoters 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 flat buyer agreement by the promoters are 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.

**Due date of handing over possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said flat within a period of 4 years from the date of approval of building plans (11.05.2016) or grant of environment clearance, (29.09.2016) (hereinafter referred to as the "Commencement Date"), whichever is later. The period of 4 years is calculated from environment clearance i.e., 29.09.2016 being later. The period of 4 years expired on 29.09.2020. The respondent has sought further extension of a period of 6 months on account of Covid-19 (after the expiry of the said time period of 4 year) but there is no provision in relation to grace period in Affordable Group Housing Policy, 2013. Since the period of 4 years expires on 29.09.2020 the authority after considering the facts and circumstances of the case and acting under its notification no. 9/3-2020 HARERA/GGM(Admn) dated 26.05.2020 hereby allows the 6 months grace period over and above the 4 years. Therefore, the due date of handing over possession is 29.03.2021.

- 15. Admissibility 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."*

16. 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.
17. 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., **25.08.2023** is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
18. 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;"*
19. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **10.75%** by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.

20. On consideration of the documents available on record and submissions made regarding contravention of 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 3.1 of the agreement executed between the parties on 07.07.2016, the possession of the subject apartment was to be delivered within 4 years from date of building plan approval or environment clearance whichever is later. The period of 4 years is calculated from environment clearance i.e., 29.09.2016 being later. The period of 4 years expired on 29.09.2020. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 29.03.2021. As such the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 29.03.2021 till the date of offer of possession i.e., 27.05.2021, at prescribed rate i.e., 10.75 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

**G. Directions of the authority**

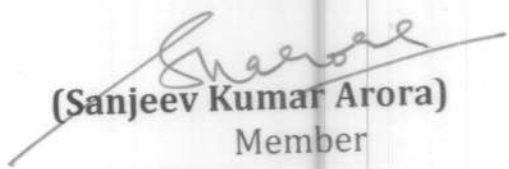
21. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions entrusted to the authority under section 34(f):
- i. The respondent is directed to pay interest at the prescribed rate of 10.75% p.a. for every month of delay from the due date of possession i.e., 29.03.2021 till the date of offer of possession i.e., 27.05.2021, at prescribed rate i.e., 10.75 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.



- ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. If there is no amount outstanding against the allottees or less amount outstanding against the allottees then the balance delay possession charges shall be paid after adjustment of the outstanding against the allottees.
- iii. The arrears of such interest accrued from 29.03.2021 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.
- 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., 10.75% by the respondent/promoter which is the same rate of interest which the promoters shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(z) of the Act.
- v. The respondent shall not charge anything from the complainants which is not the part of the agreement. However, holding charges shall not be charged by the promoters at any point of time even after being part of agreement as per law settled by Hon'ble Supreme Court in civil appeal no. 3864-3889/2020.

22. Complaint stands disposed of.

23. File be consigned to registry.

  
(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 25.08.2023