



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

Complaint no. : 3599 of 2020
Date of application : 28.03.2023
Date of decision : 30.05.2023

Aakash Agarwal through POA holder Bharat Sharma,
R/o: Mohalla Katarmal, Dhali Bazar, Chandpur,
Bijnor, U.P.

Complainant

Versus

Blackberry Realcon Pvt. Ltd.
Regd. Office At: 11th Floor, Paras Twin Tower,
Sector-54, Golf Course Road, Gurugram, Haryana.

Respondent

CORAM:

Vijay Kumar Goyal
Ashok Sangwan
Sanjeev Kumar Arora

Member
Member
Member

APPEARANCE:

Vishvjeet Singh (Advocate)
Anirudh Jamwal and Himanshu Singh (Advocates)

Complainant
Respondent

HARERA
ORDER

1. An application dated 28.03.2023, has been filed by the respondent for rectification of order dated 30.09.2022 under section 39 of the Act, 2016 passed by the authority wherein it is stated that while passing the directions, the authority has considered the due date of possession as 13.02.2017 without including the grace period of 6 months and hence requested for rectification of the order vis a vis due date of possession. In view of the same, the authority fixed the matter for a hearing on 30.05.2023.

(Handwritten signature)

A. Finding by the authority

2. The respondent filed an application for rectification of order dated 30.09.2022 in direction of the authority mentioned in para 48-point no. (i).

The relevant para of the order is reproduced below:

"The respondent is directed to pay the interest at the prescribed rate i.e., 10% per annum for every month of delay on the amount paid by the complainant from the due date of possession i.e., 13.02.2017 till 28.09.2018 i.e., expiry of 2 months from the date of offer of possession (28.07.2018)."

3. The respondent in its application dated 28.03.2023 stated that the authority vide order dated 30.09.2022 has directed the respondent to pay interest on the amount paid at prescribed rate from the due date of possession i.e., 13.02.2017 till 28.09.2018. However, the grace period of 6 months was not included while calculating the due date of possession.
4. The authority observes that section 39 deals with the *rectification of orders* which empowers the authority to make rectification within a period of 2 years from the date of order made under this Act. Under the above provision, the authority may rectify any mistake apparent from the record and make such amendment, if the mistake is brought to its notice by the parties. However, **rectification cannot be** allowed in two cases, *firstly*, orders against which appeal has been preferred, *secondly*, to amend substantive part of the order. The relevant portion of said section is reproduced below.

Section 39: Rectification of orders

"The Authority may, at any time within a period of two years from the date of the order made under this Act, with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties:

Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act:

Provided further that the Authority shall not, while rectifying any mistake apparent from record, amend substantive part of its order passed under the provisions of this Act."

5. Since the present application involves amendment of substantive part of the order by seeking rectification of the due date of possession, this would



amount to review of the order. Accordingly, the said application is not maintainable being covered under the exception mentioned in 2nd proviso to section 39 of the Act, 2016.

6. A reference in this regard may be made to the ratio of law laid down by the Haryana Real Estate Appellate Tribunal in case of ***Municipal Corporation of Faridabad vs. Rise Projects vide appeal no. 47 of 2022***; decided on 22.04.2022 and wherein it was held that the authority is not empowered to review its orders.
7. Thus, in view of the legal position discussed above, there is no merit in the application dated 28.03.2023 filed by the respondent for rectification of order dated 30.09.2022 passed by the authority and the same is hereby declined.


Sanjeev Kumar Arora
Member


Ashok Sangwan
Member


Vijay Kumar Goyal
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 30.05.2023

HARERA
GURUGRAM

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

Complaint no. : 3599 of 2020
First date of hearing: 08.12.2020
Date of decision : 30.09.2022

Akash Agarwal through POA holder Bharat Sharma
R/O: - Mohalla Katarmal, Dhali Bazar, Chandpur,
Bijnor, UP.

Complainant

Versus

Blackberry Realcon Pvt. Ltd.,
R/O: - 11th Floor, Paras Twin Tower, Sector 54,
Golf Course Road, Gurugram, Haryana.

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Member
Member
Member

APPEARANCE:

Mr. Harshit Goyal
Ms. Stuti Sharma

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 23.10.2020 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 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 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.	Name of the project	"Paras Square", Sector 63A , Village Behrampur , Tehsil Sohna , Gurugram.
2.	DTCP License no.	23 of 2013 dated 17.05.2013 (Page 95 of complaint.)
3.	RERA registered/ not registered	13 of 2018 dated 06.09.2018 Valid till 31.12.2018 (Page 22 of reply)
4.	Unit no.	ST/ 0507, 5 th floor, studio apartment. (Page 19 of complaint)
5.	Super area	870 sq. ft. (Page 19 of complaint)
6.	Allotment letter	05.08.2013 (Page 13 of complaint)
7.	Date of flat buyer agreement	24.11.2015 (Page 16 of complaint)
8.	Possession clause	<i>7.(a) The date of completion of the Project shall be Thirty-Six (36) months from the start of construction hereof, subject to force majeure or/and any other reason beyond the control of Developer, subject to all Allottee(s) having strictly complied with all the terms and conditions of this Buyer's Agreement and not being in default under any provisions of the same and all amounts due and payable by the Allottee(s) under this Buyer's Agreement having been paid in</i>

		<i>time to the Developer, The Developer immediately upon the receipt of OC/CC, shall give notice to the Allottee(s), in writing, to take possession of the Unit for his/its fit-outs and occupation and use ("Notice of Possession"), on furnishing certain documents by the Allottee(s). (Emphasis supplied)</i>
9.	Date of excavation	13.02.2014 (Page 77 of complaint)
10.	Due date of Possession	13.02.2017 (Taken from the date of start of construction.)
11.	Total sale consideration	Rs.84,57,990/- (As alleged by complainant)
12.	Amount paid	Rs.83,12,104/- (As alleged by complainant)
13.	Occupation certificate	23.07.2018 (Page 23 of reply)
14.	Offer of possession	28.07.2018 (Page 92 of complaint)

B. Facts of the complaint

3. The complainant is an innocent allottee of the project "Paras Square" situated at Village Behrampur, Tehsil Sohna, Sector 63A, Gurugram being developed by the respondent company. That the respondent company i.e. Blackberry Realcon Private Limited is engaged in development of real estate projects in pan India. That the project in question 'Paras Square' is being develop by the respondent as a mixed-use development project comprising of studio apartments, service apartments, shops. The respondent company obtained license bearing



no. 23 of 2013 dated 17.05.2013 from Town and Country Planning Department, Haryana in respect of the project in question.

4. In the year 2013, the representatives of the respondent approached the complainant and presented rosy picture of the project in question and assured timely delivery of the possession of the project in question. On the basis of the assurances as given by the said agents and representatives to be true and correct, the complainant approached the respondent and submitted application form dated 05.08.2013 for booking of a Studio Apartment in the project in question. The respondent company issued allotment letter dated 05.08.2013 in respect of studio apartment bearing no. ST-0507 admeasuring 870 sq. ft. in the name of complainant.
5. The flat buyer agreement was duly executed between the complainant and the respondent on 24.11.2015 in respect of the said unit. Due to clearly visible delay in delivery of the possession of the booked unit, the complainant was forced to avail Home Loan from HDFC Bank for making timely payments to the respondent company. A tripartite agreement dated 29.10.2015 was duly executed between complainant, respondent and HDFC Bank.
6. According to clause 7(a)(i) of the flat buyer agreement dated 24.11.2015, the respondent was liable to deliver the possession of the unit within a period of 36 months from the date of start of construction (As per payment schedule issued by the respondent, date of start of



construction/excavation is 13.02.2014) and a grace period of 180 days. Accordingly, the due date of possession comes out to be 13.08.2017 inclusive of grace 02.,7 period. However, the respondent has failed to fulfil its liability under clause 7 (a) (i) of the flat buyer agreement and section 11(4) (a) of the Real Estate (Regulation and Development) Act, 2016 till date.

7. The respondent company has failed to offer valid and lawful possession of the booked unit till date. The respondent issued unlawful and illegal possession offer letter dated 28.07.2018. As the respondent applied to Director of Town & Country Planning, Haryana for issue of Completion Certificate vide application dated 14.02.2019 and the Completion Certificate bearing memo no LC-2458-JE (VA)- 2019/2278 was issued on 24.01.2020.
8. The respondent company has failed to deposit the External Development Charges (EDC) collected from allottees of the real estate project including complainant in question with Director of Town & Country Planning, Haryana and has misused the funds on account of EDC.
9. The respondent company has failed to deposit the Infrastructure Development Charges (IDC) collected from allottees of the real estate project including complainant in question with Haryana State Government and has misused the funds collected on account of IDC. The respondent has also charged illegal and unlawful car parking space



- charges from the complainant and there is no allotment of dedicated closed parking space to the complainant.
10. The respondent has also charged an arbitrary amount towards one time additional charges towards EEC, ECC, Provision of DTH & Internet, Water & Drainage connection whereas such facilities have yet to be provided to the complainant. The respondent is arbitrarily and unfairly seeking an amount towards 2 years advance common area maintenance without justifying the basis on which it is charging such an amount in advance.
 11. That the complainant had invested their hard-earned money in the booking of the unit in the project in question on the basis of false promises made by the respondent at the time of booking in order to allure the complainant. However, the respondent has failed to abide all the obligations of him stated orally and under the buyer's agreement duly executed between both the present parties.
 12. That the complainant had already paid Rs.83,12,104/- out of the total sale consideration i.e. Rs.84,57,990/- as and when demanded by the respondent.
 13. Therefore, the complainant has filed the present complaint before this hon'ble authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of Haryana Real Estate (Regulation and Development) Rules,2017 to seek redressal of the grievances against the respondent company.



C. Relief sought

14. The complainant has sought the following reliefs:

- i. Direct the respondent to pay delay possession charges at the rate of interest prescribed.
- ii. Direct the respondent to refund the unlawful external development charges and infrastructure development charges by respondent.
- iii. Direct the respondent to refund the excess amount received for two years advance maintenance charges.

D. Reply by the respondent

15. That the facts of the present complaint under reply are wrong and specifically denied unless specifically admitted hereinafter by the respondent. The respondent submitted that complainant has not come before this authority with clean hands. It is submitted that complainant is not a genuine flat purchaser or consumer and has purchased the said flat for commercial and investment purposes for which the jurisdiction of the authority cannot be invoked, since the object of the Act is to protect the interests of the consumers and not the investors.

16. That the same is also brought out from the fact that since the complainant has not been successful in selling the flat at a premium he has filed this frivolous complaint just to avoid making the remaining payments in terms of the agreed payment plan.

17. That it is further submitted that the complainant is guilty of not adhering to the payment schedule and has made most of the payment



after passing of the respective due dates. The same is not permissible under the Act of 2016 and in view of the same, the complaint merits outright dismissal. It is further submitted that the present complaint is not maintainable and is premature since the project is a registered under the Act, having registration no. 13 of 2018 dated 06.09.2018. It is also submitted that the present complaint is infructuous and not maintainable since the construction of the project has already been completed and the occupation certificate has also been received on 23.07.2018. Thus, there is no merit in the present complaint or the contention that there has been any delay on the part of the respondent since it is admittedly that it is the complainant who has defaulted in payment of the instalments as per the agreed payment plan.

18. That moreover the construction of the unit and tower were complete in 2018 itself and the respondent had in fact applied to DTCP for grant of the occupation certificate in May 2018 itself alongwith all the requisite documents. Therefore, there is no delay at all on the part of the respondent in completing the construction of the unit. It is submitted that complainant in the present complaint under reply have also admitted the fact that they have not paid the total consideration of Rs.94,31,151/-. It is further submitted that the present complaint is not maintainable since the possession had to be handed over to the complainant in terms of clause 7(a) & 7(b) of the flat buyer agreement which clearly provides that subject to the complainant complying with



all the terms of the flat buyer agreement and making timely payments of the instalments as and when they fall due the respondent proposes to offer the possession of the apartment within a period of 42 months from the date of commencement of the construction of the project, subject to force majeure.

19. That moreover, all the approvals for commencement of the construction work were received towards the end of 2013 and the construction work began in January 2014. It is reiterated that the construction of the unit is complete and the offer of possession has already been issued to the complainant on 28.07.2018 with the demand for the remaining payment. However, the complainant has not only failed to make the payment of the due amount, but he has also filed the present complaint to harass the respondent. It is submitted that the respondent is willing to handover the possession to the complainant subject to payment of the outstanding dues as per the flat buyer agreement. It is submitted that the present complaint is not maintainable since not only is the complainant in breach of the flat buyer agreement, but they are also in violation of the Act and the rules.
20. That section 19 of the Act lays down the rights and duties of the allottees and sub-clause (6) of section 19 provides that the allottee shall be responsible to make payments in the manner and as per the time specified in the agreement between the parties. In the present case it has been admitted by the complainant that they he has failed to make



the complete payment therefore the complainant is in breach of the Act and the rules. It is submitted that this authority ought to take note of the fact that it is the respondent herein who has suffered due to the breaches committed by complainant since the respondent has continued with the construction of the apartment despite the complainant not paying the complete consideration.

21. That the respondent was not obligated to complete construction and offer possession till the time the complainant performs his obligations under the agreement. Moreover, the complainant also cannot seek interest or damages since he is in default, and it is the respondent who has completed the construction and can exercise his right to cancel the agreement or claim damages from the complainant for the defaults on his part.
22. That it is also pertinent to mention here that in the present complaint, the complainant has not been able to point out a single provision of either the Act or rules which has been violated by the respondent. Thus, this complaint is not entitled to any relief at all.
23. That the present complaint being made by the complainant after the respondent having issued the letter of offer of possession is an afterthought and is being made to harass the respondent and make unlawful gains at its expense. In view of the aforesaid submissions, the present complaint be dismissed with costs.



E. Jurisdiction of the authority

24. The authority observes that it 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 promoter, 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 entitlement of DPC on ground of complainant being investor

28. The respondent submitted that the complainant is investor and not consumer/allottee, thus, the complainant is not entitled to the protection of the Act and thus, the present complaint is not maintainable.
29. The authority observes that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims and objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that under section 31 of the Act, any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and



conditions of the buyer's agreement, it is revealed that the complainant is an allottee/buyer and they have paid total price of Rs.83,12,104/- to the promoter towards purchase of the said unit in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

30. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between respondent and complainant, it is crystal clear that the complainant is allottee as the subject unit was allotted to him by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 000600000010557 titled as ***M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.*** has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the complainant-allottee being investor is not entitled to protection of this Act stands rejected.



F.II Objection regarding the delay in payment by the allottee.

31. The objection raised by the respondent regarding delay in payment by the complainant is totally invalid because the complainant has already paid the amount of Rs.83,12,104/- against the total sale consideration of Rs.84,57,990/- to the respondent. The complainant has already paid more than 98% of the total amount. The fact cannot be ignored that there might be a certain group of allottees that defaulted in making payments but upon perusal of flat buyer agreement on record it is observed that the promoter has charged a hefty rate of interest from the allottees on account of the delayed payments. Section 19(6) of Act lays down an obligation on the allottee(s) to make timely payments towards consideration of the allotted unit. Moreover, the stake of all the allottees cannot be put on stake on account of non-payment of due installments by a group of allottees. Hence, the plea advanced by the respondent is rejected.

G. Findings on the relief sought by the complainant.

G.I Direct the respondent to pay delay possession charges at the rate of interest prescribed .

32. 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. Section 18(1) of the Act 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."

33. As per clause 7.(a) of the flat buyers agreement dated 24.11.2015 provides for handing over of possession and is reproduced below.

*7.(a) The date of completion of the Project shall be **Thirty-Six (36) months from the start of construction** hereof, subject to force majeure or/and any other reason beyond the control of Developer, subject to all Allottee(s) having strictly complied with all the terms and conditions of this Buyer's Agreement and not being in default under any provisions of the same and all amounts due and payable by the Allottee(s) under this Buyer's Agreement having been paid in time to the Developer, The Developer immediately upon the receipt of OC/CC, shall give notice to the Allottee(s), in writing, to take possession of the Unit for his/its fit-outs and occupation and use ("Notice of Possession"), on furnishing certain documents by the Allottee(s). (Emphasis supplied)*

34. **Admissibility of grace period:** The promoter has proposed to handover the possession of the said unit within a period of 36 months from the date of start of construction. As per the documents available on record, the respondent has raised the 'Demand on account of Excavation' on 13.02.2014. Therefore, the due date of handing over possession comes out to be 13.02.2017.

35. **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.

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., 30.09.2022 is **8.00%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10%**.
38. 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:

"(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%** by the respondent /promoter which is the same as is being granted to the complainant in case of delayed possession charges.

40. On consideration of the circumstances, the documents, submissions made by the parties 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 7.(a) of the agreement executed between the parties on 24.11.2015, the due date of handing over possession of the subject apartment which comes out to be 13.02.2017 as decided in aforesaid paras of this order. Occupation certificate has been received by the respondent on 23.07.2018 and the possession of the subject unit was



offered to the complainant on 28.07.2018. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the flat buyer agreement dated 24.11.2015 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the flat buyer agreement dated 24.11.2015 to hand over the possession within the stipulated period.

41. 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 23.07.2018. The respondent offered the possession of the unit in question to the complainant only on 28.07.2018, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 month of reasonable time is being given to the complainant keeping in mind that even after intimation of possession, practically he has to arrange a lot of logistics and requisite documents including but not



limited to inspection of the completely finished unit, but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 13.02.2017 till the expiry of 2 months from the date of offer of possession (28.07.2018) after obtaining occupation certificate from the competent authority which comes out to be 28.09.2018.

42. 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 at prescribed rate of interest i.e., 10% p.a. w.e.f. 13.02.2017 till the expiry of 2 months from the date of offer of possession (28.07.2018) which comes out to be 28.09.2018 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

G.2 Direct the respondent to refund the unlawful external development charges and infrastructure development charges by respondent.

43. The complainant alleged that the respondent has illegally charged excess amount of EDC and IDC from the complainant against the said unit. The respondent has charged EDC/IDC as per clause 1.1 of the agreement dated 24.11.2015. The said clause of the agreement is reproduced hereunder:



"The Sale Consideration as more particularly reserved in Clause 1.1 (a) payable by the Allottee(s) to the Developer constitutes the basic sale consideration, excluding the parking charges, external development charges ("EDC"), infrastructure development charges ("IDC"), Fire Fighting Charges, Service Tax and other charges as more particularly defined in clause 1.2 (d) and 1.2(e) respectively."

44. The promoter is entitled to recover the actual charges paid to the concerned departments from the complainant/allottee on pro-rata basis on account of electricity connection, sewerage connection and water connection, etc., i.e., depending upon the area of the flat allotted to the complainant vis-à-vis the area of all the flats in this project. The respondent is directed to provide specific details with regards to these charges and the complainant is also be entitled to proof of such payments to the concerned departments along with a computation proportionate to the allotted unit, before making payments under the aforesaid heads.

G.3 Direct the respondent to refund the excess amount received for two years advance maintenance charges.

45. The complainant contended that the respondent is arbitrarily and unfairly seeking an amount towards 2 years advance common area maintenance without justifying the basis on which it is charging such an amount in advance. The respondent submitted that the amount for maintenance charges is levied for maintenance and upkeep of the project for the benefit of all persons purchasing their apartment in the project.



46. The authority in case of **Varun Gupta Vs. Emaar MGF Land Ltd.(supra)**, has observed as under:

"The respondent is right in demanding advance maintenance charges at the rates' prescribed in the builder buyer's agreement at the time of offer of possession. However, the respondent shall not demand the advance maintenance charges for more than one year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year".

47. In the present complaint, as per statement of account dated 28.07.2018, the respondent has charged a sum of Rs.36,958/- (Rs.3/- per sq. ft. alongwith GST) towards advance maintenance charges for period of one year. In view of the above, the respondent is right in demanding advance maintenance charges for a period of 12 months.


H. Directions of the authority

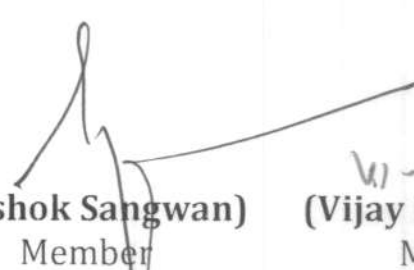
48. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f) of the Act:

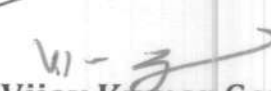
- i. The respondent is directed to pay the interest at the prescribed rate i.e., 10% per annum for every month of delay on the amount paid by the complainant from the due date of possession i.e., 13.02.2017 till 28.09.2018 i.e. expiry of 2 months from the date of offer of possession (28.07.2018).
- ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.



- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iv. The rate of interest chargeable from the complainant/allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10% 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 delay possession charges as per section 2(za) of the Act.
 - v. The respondent shall not charge anything from the complainant which is not part of the agreement of sale.
 - vi. The respondent is not entitled to charge holding charges from the complainant/allottee at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court of India in civil appeal nos. 3864-3889/2020 on 14.12.2020.
49. Complaint stands disposed of.
50. File be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 30.09.2022