

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

Complaint no.	:	4023 of 2020
First date of hearing	:	13.01.2021
Order reserved on :		25.05.2023
Order Pronounced on		31.08.2023

Sh. Ravi Narain Vats S/o Sh. N.D.Vats R/o: S-311, 2 nd Floor, Uppal's South End, Sohna Road, Near Omaxe, Gurgaon.	Complainant
Versus	
Mapsco Builders Private Limited Regd. office: 52, North Avenue Road, Punjabi Bagh (West), New Delhi, PIN-110026	Respondent
CORAM:	
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Complainant-in-person	Complainant
Shri Somesh Malhotra (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 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. no.	Particulars	Details
1.	Name of the project	"Mapsko Royal Ville", Sector-82, Gurgaon
2.	Nature of project	Residential Group Housing Complex
3.	Unit no.	Flat no. 1002 on 10 th floor in Regal tower [As per page no. 44 of complaint]
4.	Unit area admeasuring	1790 sq. ft. [Super area] [As per page no. 44 of complaint]
5.	Date of flat buyer agreement	01.05.2011 [As per page no. 42 of complaint]
6.	Possession clause	<p>Clause 17(a) of flat+ buyer's agreement</p> <p><i>That the promoter shall endeavor to complete the construction of the said flat <u>within a period of 42 months from the date of signing of this agreement with the buyer</u> or within a extended period of six months, subject to force majeure conditions as mentioned in clause (b) hereunder or subject to any other reasons beyond the control of the promoter. No claim by way of damages/ compensation shall lie against the promoter in case of delay in handing over the possession beyond 48 months from the date of signing</i></p>

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		of this agreement, except charges Rs. 5 per sq. ft. per month will be payable by the promoter to the original allottee only till handing over the possession, further no said charges will be payable by the promoter to the original allottee whose payment not received as per time frame mentioned in this agreement.
7.	Due date of possession	01.11.2014 [Calculated from the date of execution of flat buyer's agreement i.e., 01.05.2011] Grace period of 6 months is not allowed.
8.	Payment plan	Construction linked payment plan
9.	Total sale consideration	Rs.56,00,953/- [As per page no. 52 of complaint]
10.	Amount paid by the complainant	Rs.59,63,510/- [As alleged by the complainant on page no. 6 of complaint]
11.	Occupation certificate	20.07.2017 [As per page no. 53 of reply]
12.	Offer of possession	21.07.2017

B. Facts of the complaint

- That the complainant purchased a residential unit, bearing no. 1002 on 10th floor in regal tower, having super area of 1790 sq. ft. in the project of the respondent namely, Mapsko Royal Ville.
- That a flat buyer agreement dated 01.05.2011, was executed between the parties stipulating the terms and conditions, including the sale



consideration as well as the time of possession. Thereafter, according to that he paid instalments in the manner visualised therein.

5. That as per the terms of agreement, the respondent company was to handover possession of the unit on or before 01.11.2014, excluding the grace period of six months but, in any way, on or before 01.05.2015. However, it is an admitted fact that, not to speak of possession of the unit, he was not even informed about the likely date for handing over possession of the unit and status of the construction, despite having received more than 100% of the agreed sale consideration.
6. That the complainant has paid Rs.59,63,510/- against the sale consideration of Rs.56,00,953/- as per the acknowledgement of respondent company, received vide its e-mail. At this juncture, it would be beneficial to recollect that complainant had opted for "Construction Linked Plan", i.e., the demands for payments were linked with the status of construction. Since the complainant has paid more than 100% of the demand, raised by it, from time to time, it would be logical to infer that the construction must have been proportionate to the amount received. However, the fact remains otherwise, as is evident from the photographs, depicting the status of construction at the site.
7. That it has not fulfilled its mandatory obligations, in terms of Section 11(4) of the Act, in respect of adhering to the time frame in handing over possession of the unit nor has compensated the complainant against the delay in handing over possession of the unit, as per the mechanism agreed upon. Rather has not even acknowledged its liability towards the same nor

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has proposed the mechanism for its settlement. Whereas it remained indifferent towards the manner of disbursal of amount towards compensation despite having been repeatedly asked by complainant.

8. The complainant being aggrieved from the unfair practice of the respondent were put to financial and mental predicament and to constant ignorance by it with regard to the draft of the agreement to sell. The complainant left with no option but to reach this authority for compensation for not handing over the possession of the flat and interest on the paid-up amount.

C. Relief sought by the complainant:

9. The complainant has sought following relief(s):
- i. Direct to the respondent to compensate the complainant for not handing over the possession of the flat.
 - ii. Direct the respondent to pay interest for every month of delay, on the amount paid so far, at the rate mandate by Act of 2016.
10. On the date of hearing, the authority explained to the respondent/promoter about the contraventions 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 by the respondent:

11. The respondent has contested the complaint on the following grounds.
- i. That the present complaint is bundle of lies and hence liable to be dismissed as it is filed on baseless grounds. He has failed to provide the correct/complete facts and is raising false, frivolous, misleading and baseless allegations against the respondent with intent to make unlawful gains. He has not approached the authority with clean hands and has

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- suppressed relevant material facts. The complaint under reply is devoid of merits and the same should be dismissed with cost.
- ii. That it is imperative to note, that the complainant learned about the project titled as 'Mapsko Royal Ville' ('Project') and repeatedly approached the respondent to know the details of the said project. He further inquired about the specification and veracity of the project and was satisfied with every proposal deemed necessary for the development of the project.
 - iii. That he decided to invest in the project of the respondent and booked a unit bearing no. 1002 in Regal tower admeasuring super area 1790 sq. ft. (herein referred to as the 'unit') without getting induced by any sale, plan, brochure, representation/advertisements, or commitment made by it either orally or in written; only solely upon his own judgement and investigation.
 - iv. That on 01.05.2011, a flat buyer agreement was executed between the parties wherein allotting unit bearing no. 1002 in Regal tower admeasuring super area of 1790 sq. ft. for a total sale price of Rs.56,00,953/- in the aforesaid project.
 - v. That he was well aware of the terms and conditions mentioned under the agreement and agreed to sign upon the same upon being fully satisfied with each and every term without any protest or demur.
 - vi. That it is imperative to note, that the complainant, learned about the project of the respondent titled as 'Mapsko Royal Ville' and approached the respondent repeatedly to know the details of the said project. He further inquired about the specification and veracity of the project and

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was satisfied with every proposal deemed necessary for the development of the project.

- vii. That on not receiving the possession of the flat by due date i.e., 01.05.2015 the complainant approached the Hon'ble NCDRC and filed a complaint under section 12(1)(c) of the Consumer Protection Act, 1986. **Complaint no. 3025 of 2017; I.A. No. 21155 of 2018**" seeking the same reliefs as he sought from the authority. Given the same, since the complainant did not withdraw from the said complaint before Hon'ble NCDRC, the complainant acted in breach of the Real Estate (Regulation & Development) Act, 2016, particularly, Section 71, and therefore, the captioned complaint ought to be dismissed at the very threshold.
- viii. That as per catena of judgments of the Hon'ble Supreme Court of India, though the remedies available to a consumer under the Consumer Protection Act and the Act, 2016 are concurrent but both cannot be exercised simultaneously, and the consumer has a choice to exercise either one of the two remedies available under the laws of India. Further, Section 71 clearly states that an aggrieved person having a complaint pending before consumer courts may file a complaint before the Hon'ble Authority only after first withdrawing the complaint from the consumer courts. Given the same, it is clear that the captioned complaint is not maintainable before the Hon'ble Authority as the complaint bearing no. bearing complaint no. CC/3025/2017 bearing title "*Manpreet Singh & 11 Ors. vs. MAPSKO Builders Private Limited*" wherein the complainant is seeking similar reliefs, is pending adjudication and the complainant has, in order to mislead this authority, deliberately avoided withdrawing the same first before approaching this authority.

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- ix. That the entire case of the complainant is nothing but a web of lies, false and frivolous allegations made against the respondent. He has not approached the authority with clean hands. Hence, the present complaint deserves to be dismissed with heavy costs. That it is brought to the knowledge of the authority that he is guilty of placing untrue facts and are attempting to hide the true colour of his intention.
- x. That the present complaint is filed with the oblique motive of harassing the respondent and to extort illegitimate money while making absolutely false and baseless allegations against the respondent.

12. 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 based on these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

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

13. 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.

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E.II Subject matter jurisdiction

14. 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 allottee and the real estate agents under this Act and the rules and regulations made thereunder.

15. So, in view of the provisions of the Act of 2016 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:

F.I Objection raised by the respondent is that the complainant has filed a complaint before Hon'ble NCDRC seeking the same relief.

16. The respondent has raised a contention that a similar complaint seeking relief has been filed by the complainant before Hon'ble NCDRC. Thus, in view of section 9 of Code of Civil Procedure, 1908 the present complaint is not maintainable. Further during proceedings on 12.12.2019 before Hon'ble NCDRC, the counsel of complainant has submitted that the complainants are

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not willing to accept possession offered by the opposite party and wants refund along with compensation.

17. The Authority observes that during the course of proceedings dated 31.08.2023, it has been brought to the knowledge of the Authority that the complainant has already withdrawn the complaint pending before Hon'ble NCDRC in order to avail remedy before the Authority under provision of Act of 2016. Hence, the plea of the respondent is rejected.

G. Findings on the relief sought by the complainant

G.I Direct the respondent to pay interest for every month of delay, on the amount paid so far, at the rate mandate by Act of 2016.

18. 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."

19. Clause 17(a) of flat buyer's agreement dated 01.05.2011 provides for handing over of possession and is reproduced below:

"Clause 17(a).

*That the promoter shall endeavor to complete the construction of the said flat **within a period of 42 months from the date of signing of this agreement with the buyer** or within a extended period of six months, subject to force majeure conditions as mentioned in clause (b) hereunder or subject to any other reasons beyond the control of the*

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promoter. No claim by way of damages/ compensation shall lie against the promoter in case of delay in handing over the possession beyond 48 months from the date of signing of this agreement, except charges Rs. 5 per sq. ft. per month will be payable by the promoter to the original allottee only till handing over the possession, further no said charges will be payable by the promoter to the original allottee whose payment not received as per time frame mentioned in this agreement."

20. The Authority has gone through the possession clause of the agreement and observes that the respondent-developer proposes to handover the possession of the allotted unit within a period of 42 months from the date of execution of agreement and along with grace period of 6 months. The buyer's agreement inter-se parties was executed on 01.05.2011; as such the due date of handing over of possession without considering grace period comes out to be 01.11.2014 without considering admissibility of grace period.

21. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges however, 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

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lending rates which the State Bank of India may fix from time to time for lending to the general public.

22. 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.
23. 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., 31.08.2023 is @ 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
24. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:
- "(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
- Explanation. —For the purpose of this clause—*
- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*
- (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*
25. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.75 % by the respondent/promoter



which is the same as is being granted to them in case of delayed possession charges.

26. 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 17(a) of flat buyer's agreement executed between the parties on 01.05.2011, the possession of the subject apartment was to be delivered by 01.11.2014.
27. 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 has been obtained by the respondent-builder and offered the possession of the subject unit to the complainant after obtaining occupation certificate on 21.07.2017. So, it can be said that the complainant would come 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 to be given to the complainant keeping in mind that even after intimation of possession, practically one has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but that 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

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date of possession i.e., 01.11.2014 till actual handing over of possession or offer of possession made on 21.07.2017 after obtaining occupation certificate from competent authority plus two months, whichever is earlier.

28. The complainant is also seeking relief w.r.t compensation in the aforesaid relief, Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. Supra* held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation.
29. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the flat buyer's agreement dated 01.05.2011 to hand over the possession within the stipulated period. Accordingly, the 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 allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 01.11.2014 till offer of possession plus 2 months i.e., up to 21.09.2017 at the 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.

H. Directions of the authority:

30. 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 shall pay delayed possession interest at the prescribed rate i.e., 10.75% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 01.11.2014 till offer of possession(21.07.2017) plus two months after obtaining occupation certificate ~~is~~ up to 21.09.2017 as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- ii. The arrears of such interest accrued from 01.11.2014 till date of this order shall be paid by the promoter to the allottee within a period of 90 days from date of this order and any amount towards delay possession interest already paid or credited in account of allottee shall be adjusted/deducted from such payable amount, if any.
- iii. The respondent shall not charge anything from the complainant which is not the part of the flat buyer's agreement.
- 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 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 complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and thereafter payment of such dues, if

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any, the respondent shall handover the possession of the allotted unit complete in all aspects as per specifications of flat buyer's agreement.

31. Complaint stands disposed of.

32. File be consigned to registry.

V.I - 3
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 31.08.2023



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GURUGRAM