

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

Complaint no. :	1483 of 2019
Date of filing complaint:	22.04.2019
First date of hearing:	13.08.2019
Date of decision :	05.09.2023

Smt. Urvashi Talwar Smt. Sonal Kumar Both R/O: 1069, Sector 15 b, Chandigarh, India	Complainants
Versus	
M/S Emaar Mgf Land Ltd. Regd. Office: Ece House, 28, Kasturba Gandhi Marg, New Delhi 110001	Respondent

CORAM:	
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
APPEARANCE:	
Sh. Garvit Gupta (Advocate)	Complainant
Sh. J.K Dang (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 29 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.no.	Particulars	Details
1.	Name of the project	Marbella, Sector 65 & 66, Gurugram, Haryana
2.	Total area of the project	109.063 acres
3.	Nature of the project	Residential plotted colony
4.	DTCP license no. and validity status	i. 97 of 2010 dated 18.11.2010 for 106.856 acres Valid/renewed up to 18.11.2022 ii. 41 of 2011 dated 03.05.2011 for 1.06 acres Valid/renewed up to 03.05.2024
5.	HRERA registered/ not registered	Registered vide no. 307 of 2017 dated 17.10.2017 for 41.86 acres
6.	HRERA registration valid up to	16.10.2022
7.	Villa no.	MAR-MD-01B [annexure R2, page 38 of reply]
8.	Super built-up area	6520 sq. ft. on 350 sq. yd. plot
9.	Provisional allotment letter dated	19.11.2010 [annexure R2, page 38 of reply]

12

10.	Date of execution of buyer's agreement	18.03.2011 [annexure R4, page 43 of reply]				
11.	Possession clause	<p>10. POSSESSION</p> <p>(a) Time of handing over the possession</p> <p><i>Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the Villa within 30 (thirty) months from commencement of development work. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of 3 (three) months, for applying and obtaining the occupation certificate in respect of the Villa.</i></p> <p>(Emphasis supplied) [Page 56 of reply]</p>				
12.	Date of start of construction as per statement of account dated 22.04.2019	27.04.2012				
13.	Due date of possession	27.10.2014 [Note: Grace period is not allowed]				
14.	Total consideration	<table border="0"> <tr> <td>As per statement of account dated 22.04.2019 at page 111 of reply</td> <td>As per payment plan annexed with the buyer's agreement</td> </tr> <tr> <td>Rs. 6,13,66,890/-</td> <td>Rs. 5,98,35,057/-</td> </tr> </table>	As per statement of account dated 22.04.2019 at page 111 of reply	As per payment plan annexed with the buyer's agreement	Rs. 6,13,66,890/-	Rs. 5,98,35,057/-
As per statement of account dated 22.04.2019 at page 111 of reply	As per payment plan annexed with the buyer's agreement					
Rs. 6,13,66,890/-	Rs. 5,98,35,057/-					

A

15.	Total amount paid by the complainant as per statement of account dated 22.04.2019 at page 112 of reply	Rs. 6,22,66,312/-
16.	Occupation certificate	03.12.2018 (Page 117 of the reply)
17.	Offer of possession	14.12.2018 [annexure R10, page 119 of reply]
18.	Delay compensation already paid by the respondent in terms of the buyer's agreement as per statement of account dated 22.04.2019 at page 112 of reply	Rs.30,35,283/-

B. Facts of the complaints:

3. That based on promises and commitment made by the respondent, complainants booked a villa in residential project Marbella Sector- 65 & 66 Gurugram admeasuring 6520 sq ft super built up area on 350 sq yd. plot. The initial booking amount of Rs 30,00,000 /- was paid through cheque dated 16.09.2010 more than nine year back.
4. That after extracting Rs 1,88,64,875/- (more than 40 % amount of total paid) from complainants before February, 2011 the respondent to dupe the complainants executed buyer's agreement between the parties on dated 19.03.2011, for unit MAR-MD-01B(Basement, Ground+2), "Marbella", Sector 65-66 Gurugram, Haryana and just to create a false belief that the project shall be completed in time bound manner and in

A

the garb of this agreement persistently raised demands due to which they were able to extract huge amount of money from the complainants.

5. The total cost of the said villa is Rs. 6,13,66,888/- out of that sum of Rs. 5,92,31,029/- was demanded and paid by complainants before offer of possession in time bound manner. As per buyer's agreement builder was liable to handover the possession within 30 months from the commencement of development work with grace period of 3 months. As per demand of builder started the development work on dated 27.04.2012. As per document, which was provided by builder, was liable to offer the possession before 27.01. 2015 including grace period of 3 months.
6. That the respondent offered the possession on 14.12.2018 and project was delayed approx 3 year 9 months. At the time of offer of possession builder adjusted the delay penalty @Rs 10/ sq fit per months (From handing over date 27 January 2015 to 14 December, 2018) .
7. That the complainants had paid before time and more amount as demanded by the respondent. As per section 19 (6) the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act) complainants has fulfilled their responsibility in regard to making the necessary payments in the manner and within the time specified in the said agreement. Therefore, the complainants herein is not in breach of any of its terms of the agreement.

8. That keeping in view the complainants who has spent his entire hard-earned savings in order to buy this home and stands at a crossroads to nowhere. The inconsistent and lethargic manner, in which the respondent conducted its business and their lack of commitment in completing the project on time, has caused the complainants great financial and emotional loss.
9. That such an inordinate delay in the delivery of possession to the allottee is an outright violation of the rights of the allottee under the provisions of RERA act as well the agreement executed between complainants and the respondent. Therefore, the complainants demand delay penalty.

C. Relief sought by the complainants:

10. The complainants have sought following relief(s):
- i. Direct the respondent to pay interest at the prescribed rate of interest for every month of delay.
11. 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 by respondent:

12. The respondent by way of written reply made the following submissions: -

13. That the complaint filed by the complainant is baseless, vexatious and is not tenable in the eyes of law therefore, the complaint deserves to be dismissed at the threshold. Further, the present complaint lacks any cause of action to approach this Authority and as such the same deserves to be dismissed at the very threshold. The present complaint is filed with oblique motives without any merits. The allegations and averments in the complaint are false and frivolous and hence, there is no cause of action in the cap.
14. That the complainants had approached the respondent sometime in the year 2010 for purchase of a Villa in its upcoming residential project "Marbella" situated in Sector 65/66, Gurgaon. The complainants made an application on 19.11.2010 to the respondent for provisional allotment of a Villa in the project. The complainants, in pursuance of the aforesaid application form, was allotted an independent Villa bearing no MAR-MD-01B in the project vide provisional allotment letter dated 19.11.2010. The complainants consciously and willingly opted for a payment plan in which the first three instalments were time bound while the remaining instalments were construction linked. The complainants agreed and undertook to remit the sale consideration for the Villa in question on time as per the payment schedule.
15. That the buyer's agreement was executed between the parties on 18.03.2011. Subsequently, on account of service tax implications on the basic sale price and preferential location charges pursuant to various

A

notifications issued by the competent authority, the payment plan appended to the buyer's agreement was revised. It is pertinent to mention herein that the complainants had also requested for change in payment plan vide undated letter. Although having undertaken to make timely payment of instalments, right from the very beginning complainants failed to make payment in a timely manner.

16. That the respondent completed construction of the villa and made an application to the competent authority for issuance of the occupation certificate in respect thereof. The competent authority issued the occupation certificate vide memo dated 12946 dated 3.12. 2018. Upon receipt of the occupation certificate possession of the villa was offered to the complainants vide letter dated 14.12.2018. The complainants were called upon to remit the balance amount payable as per the annexed statement of account, complete the requisite formalities and documentation to enable the respondent to hand over possession of the villa to the complainants. It is pertinent to mention herein that compensation for delay amounting to Rs 30,35,283/- has already been credited to the complainants at the time of offer of possession.
17. That the complainants did not come forward to take possession of the villa and instead of taking possession of the villa, the complainants sent frivolous emails to the respondent purportedly raising queries that had already been replied to by the respondent and the complainants have thereafter proceeded to file the present false and frivolous complaint.



18. That the construction of the Villa was completed before 26.09.2018 when application for issuance of Occupation Certificate was made to the competent authority. The Complainants have duly been credited with compensation for delay in offering possession, as per the terms and conditions of the Buyer's Agreement. As has been submitted hereinabove, a sum of Rs 30,35,283/-/- has already been credited to the complainants at the time of offer of possession. The complainants are not entitled to any compensation for the time period taken by the statutory authorities in according to approvals including issuance of the occupation certificate. The complainants are not entitled to any additional compensation over and above that which is set out in the buyer's agreement dated 18.03.2011.
19. That it is submitted that all demands which have been raised by the respondent are strictly in accordance with the terms and conditions of the buyer's agreement between the parties. There is no default or lapse on the part of the respondent. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainants are totally baseless. Thus, it is most respectfully submitted that the present application deserves to be dismissed at the very threshold.
20. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be

A

decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

21. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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

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

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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

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 relief sought by the complainants

Relief sought by the complainant:

G.I Direct the respondent to pay interest at the prescribed rate of interest for every month of delay.

22. The present complaint was disposed off on 17.09.2019 by Shri N.K Goel, the then Administrative Officer (Petitions) - cum Registrar. An appeal was filed by the respondent bearing no. 243 of 2020 challenging the order dated 17.09.2019 and Hon'ble Tribunal has observed as under: -

The impugned order dated 17.09.2019 passed by Shri N.K. Goel, the then learned Administrative Officer (Petitions)-cum-Registrar, Haryana Real Estate Regulatory Authority, Gurugram, was completely beyond the delegation of powers to him. So, the impugned order is beyond jurisdiction, null and void and is liable to be set aside. 39. Consequently, the present appeal is hereby allowed. The impugned order dated 17.09.2019 is hereby set aside."

23. Therefore, the complaint was remitted to the learned Haryana Real Estate Regulatory Authority, Gurugram for fresh trial / decision in accordance with law.

A

24. 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."

25. Clause 10 of the buyer's agreement 18.03.2011 provides for handing over of possession and is reproduced below:

"Clause 10 POSSESSION

(a) Time of handing over the possession

Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc as prescribed by the Company, the Company proposes to hand over the possession of the Villa within 30 (thirty) months from commencement of development work. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of 3 (three) months, for applying and obtaining the occupation certificate in respect of the Villa.

26. The promoter has proposed to hand over the possession of the said unit within period of thirty months from the date of start of construction and it is further provided in agreement that promoter shall be entitled to a grace period of 90 days for applying and obtaining occupation certificate in respect of the villa. The period of 30 months expired on 27.10.2014. As a matter of fact, the promoter has not applied to the

A

concerned authority for obtaining occupation certificate within the time limit prescribed by the promoter in the buyer's agreement. As per the settled law one cannot be allowed to take advantage of his own wrong. Accordingly, this grace period of 90 days cannot be allowed to the promoter at this stage. Therefore, the due date of possession comes out to be 27.10.2014.

27. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant are 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 lending rates which the State Bank of India may fix from time to time for lending to the general public.

28. 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.

A

29. 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., 05.09.2023 is @ 8.75 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
30. 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."*

31. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.75% by the respondent/promoters which is the same as is being granted to them in case of delayed possession charges.
32. 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 10(a) of buyer's agreement executed between the parties on 18.03.2011, the possession of the subject

apartment was to be delivered within a period of thirty months and 90 days grace period from the date of start of construction. The due date of possession is calculated from the date of start of construction which comes out to be 27.10.2014 as the date of start of construction is 27.04.2012. The respondent has offered the possession of the allotted unit on 14.12.2018 after obtaining occupation certificate from competent authority on 03.12.2018.

33. 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 from the competent Authority on 03.12.2018 and it has also offered the possession of the allotted unit on 14.12.2018. 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 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., 27.10.2014 till the expiry of two months from the date of offer of possession or till actual handing over of possession, whichever is earlier. The respondent-builder has already offered the possession of the allotted unit on 14.12.2018, thus delay possession charges shall be payable till offer of possession plus two months i.e., 14.02. 2019. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per

the buyer's agreement dated 18.03.2011 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., 27.10.2014 till offer of possession i.e 14.12.2018 plus two months i.e. 14.02.2019; 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.

34. The respondent through its counsel stated at bar that the respondent has already paid a compensation of Rs. 30,35,283/- to the complainant. Therefore, the delay possession charges should be allowed after deduction of the compensation already paid by the respondent to the complainant.

H. Directions of the authority

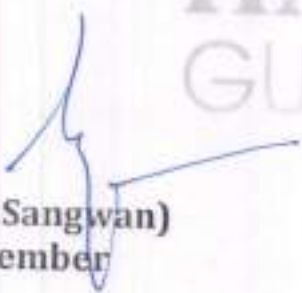
35. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):


- a. The respondent shall pay 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.; 27.10.2014 till the date of offer of possession (14.12.2018) plus two months i.e. 14.02.2019; after deduction of compensation already paid by the

A

respondent to the complainants as per proviso to section 18(1) of the Act read with rule 15 of the rules.

- b. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.
 - c. 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.
 - d. The respondent is directed to pay arrears of interest accrued, if any, after adjustment in statement of account; within 90 days from the date of this order as per rule 16(2) of the rules.
36. Complaint stands disposed of.
37. File be consigned to registry.


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.09.2023