

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

Complaint no. : 7228 of 2022
First date of hearing: 24.03.2023
Date of decision : 25.08.2023

1. Vyas Ahuja 2. Major B.S. Kadian (Retd.) 3. Niharika Kadian Ahuja All are R/O: - Flat no. 143, Vikas Kunj, Vikas Puri, New Delhi - 110018	Complainants
Versus	
Angel Infrastructure Pvt. Ltd., 406, 6th Floor, Elegance Tower, 8, Jasola District Centre, Jasola, New Delhi 110025	Respondent
CORAM:	
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Ms. Aasma Sachdeva	Advocate for the complainants
Mr. Shivam Rajpal	Advocate for the respondent

ORDER

1. The present complaint dated 15.11.2022 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 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. No.	Heads	Information
1.	Name and location of the project	"Florence Estate", Village Fazilpur, Sector-70, Gurugram
2.	Project area	14.47 acres
3.	DTCP license no. and validity status	170 of 2008 dated 22.09.2008 valid upto 21.09.2020
4.	Name of the Licensee	Central Govt Employees Welfare Housing Organisation
5.	RERA registered/ not registered and validity status	Registered Registered vide no. 287 of 2017 dated 10.10.2017 Valid upto 31.12.2018
6.	Unit no.	401, Tower - C on 4th floor (Page no. 32 of the complaint)
7.	Unit admeasuring	1865 sq. ft. (Page no. 32 of the complaint)
8.	Date of Apartment buyer's agreement	08.08.2014 (Page no. 20 of the complaint)



9.	Total consideration	Rs. 1,19,06,498/- (As stated by counsel for respondent vide proceeding dated 25.08.2023)
10.	Total amount paid by the complainants	Rs. 1,13,34,389/- (As stated by counsel for complainants vide proceeding dated 25.08.2023)
11.	Possession clause	3.1 <i>The seller proposes to handover the possession of the apartment to the purchaser within a period of 4 years with a grace period of 9 months from the date commencement of construction or execution of this agreement or date of obtaining all licenses or approvals for commencement of construction whichever is later subject to force majeure.</i>
12.	Date of environment clearance	15.10.2013 (Page 10 of reply)
13.	Due date of delivery of possession	08.05.2019 (Calculated from the date of execution of agreement being later + 9 months of grace period)
14.	Agreement to sell	24.07.2017 (Page 56 of complaint) Between original allottee and present complainants
15.	NOC Certificate from respondent w.r.t.	26.07.2017

	substitution of name of present complainants	(Page 62 of complaint)
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered
18.	Delay in handing over of possession till date of order i.e.,25.08.2023	4 years, 3 month, 17 days
19.	Grace period utilization	Grace period is allowed in the present complaint.

B. Facts of the complaint

3. That at the outset, it is submitted that the respondent has blatantly violated the promises and representations made to the complainants with respect to the timely delivery and possession of the flat with its illegal conduct thereby also causing great deal of financial and emotional stress to them.
4. The respondent had also promised timely delivery of the said flat within a period of 4 years from the date of commencement of construction or execution of this agreement or date of obtaining all licenses, permissions or approvals for commencement of construction, whichever is later subjected to force majeure. In view of the promises and representation made by the respondent, they purchased the flat, but the respondent has till date not provided possession to them and instead arbitrarily raising illegitimate demands while delaying possession.
5. They entered into an 'Agreement to Sell' dated 24.07.2017 with the erstwhile owners for the flat for a total sale consideration of Rs.

1,02,98,174/- . During the time of execution of 'Agreement to Sell', it was communicated to them that Rs. 1,02,98,174/- had already been paid by the erstwhile owners to the respondent and subsequent demands raised by the respondent shall be paid directly by them to the Respondent. And as per the said understanding, the they have paid Rs. 1,02,00,000/- including the earnest money of Rs. 12,50,000/- to erstwhile owners for the purchase of said flat.

6. After the execution of agreement to sell, an application was sent to the respondent by the erstwhile owners for change of rights to purchase the Apartment in favor of the complainants. And in response to the same, a 'No Objection Certificate' for the substitution of their name was issued by the respondent to the erstwhile owners.
7. Pursuant to the substitution of name of the Complainants, as mentioned in the foregoing para(s), an endorsement was made in favor of them in the apartment buyer agreement dated 08.08.2014, wherein the erstwhile owners had assigned all their rights and liabilities under the said agreement in favor of them, which was also duly accepted by them and pursuant to which the complainants were made purchasers of the aforesaid flat with retrospective effect.
8. Meanwhile, the respondent raised a demand on the pretext of 'Completion of Internal finishing and flooring', honoring which the Complainants further made payment of Rs. 5,62,046/- to the Respondent in April'2018. It is pertinent to note that in the month of April'2018 itself, while receiving

the aforesaid payment from them, the respondent had again ensured them that since the payment with respect to 'Completion of Internal finishing and flooring' has already been received, the possession of the flat will surely be delivered by 08.08.2018. The respondent further assured them that the possession will not be delayed further as the same date has also been registered with RERA - Gurugram.

9. However, with the passage of time, neither possession was delivered to the them by the year end 2018 nor any intimation was provided by the respondent specifying the reasons for delay. Furthermore, in the year 2019, they became proactive and started marking visits to the Respondent's office, asking for the status of possession. But all efforts of the Complainant went in vain, since the Complainants were neither properly entertained by the Respondent nor any proper explanation for delay was provided to the Complainants. That based upon the assurance of the respondent, they namely 'Vyas Ahuja' and 'Niharika Kadian Ahuja', even shifted their residence to a rented accommodation at H-113, Spaze Privy, Sector-72, Gurgaon i.e. nearby the project of the respondent, with a hope to be shifted to their new flat by the year end 2019. It is pertinent to mention that excluding the cost of shifting and advance amount borne by the complainants towards renting the said flat, they also paid Rs. 28,000/- rent per month and Rs. 5000/- maintenance per month from 01.06.2019 till January'2021.

10. Thereafter, when no definitive explanation was being provided by the respondent for the delayed possession, they being in a helpless state, started enquiring and reaching other flat buyers of the same project, wherein they learned that the respondent had arbitrarily revised the 'date of completion of project submitted to HRERA, Gurgaon' from 31.12.2018 to 31.10.2020 without informing them.
11. It is submitted that 'net amount payable' for the flat as reflected on the Complainant's ledger as maintained by the Respondent is Rs. 1,13,02,700 and as per the said ledger itself, the amount already received by the Respondent is Rs. 1,13,34,326/- i.e. Rs. 31,626/- in addition to the 'net payable amount'.
12. They with their bonafide interest have invested their life savings and taken hefty loan of Rs. 50,00,000/- (Rupees Fifty Lacs) from bank towards the purchase of aforesaid flat based upon the rosy proposals, representations, promises and personal guarantees of the respondent for investment in their flagship project. However, the respondent with utmost cruelty and unprofessional attitude has blatantly violated the promises and representations made to them with respect to the timely delivery and possession of the aforesaid flat.

C. Relief Sought

13. This Authority may direct the respondent as follows:

1. Direct the respondent to complete the project in a time bound manner and hand over the possession to the complainants of the flat with immediate effect;
2. Direct the respondent to make payment towards delayed possession charges at the prevailing rate of interest of 9.8% on the amount paid by them complainants i.e. Rs. 11,10,763.95/- for the delay in handing over the possession of the said flat to them and direct the respondent to make payment towards future and pendent lite delayed possession charges on monthly basis to the tune of Rs. 92,563.66/- to them till the date of handing over the possession of the said flat;

D. Reply by the respondent

14. That initially one M/s. Capital Builders was the absolute owner of the land situated at Village Fazilpur, Jharsa and District Gurgaon (Haryana) comprising of total admeasuring approximately 115 Kanal 15 Marla i.e. 14.468 Acres (hereinafter referred to as "the said project land").
15. That Directorate of Town and Country Planning, Haryana, (hereinafter referred to as "DTCP") issued license bearing no. 170 of 2008 dated 22.09.2008 to M/s. Capital Builders for development of the said project.
16. That, the said M/s. Capital Builders executed certain irrevocable development rights agreement in favour of the respondent and granted, conveyed and transferred all development, construction, marketing, sales and other rights and entitlements to develop, construct, market and sell groups housing project on the said project land. M/s. Capital Builders also transferred the license to the respondent.

17. That, accordingly, it proposed to develop a group housing project namely "Florence Estate" (hereinafter referred to as "the said project") on the said project land and get the site plan sanctioned from DTCP on 14.05.2013. The State Environment Impact Assessment Authority, Haryana issued the environment clearance certificate to the respondent on 15.10.2013.
18. That after conducting his own independent due diligence and being fully satisfied with the particulars of the project, the complainants voluntarily approached and applied to the respondent and expressed his interest in purchasing an apartment in the said project.
19. After duly understanding, acknowledging and agreeing to the contents of the Agreement, the Apartment Buyer's Agreement was executed between the erstwhile owners and the Respondent on 08.08.2014 and allotted Plot no.401, Tower-C, 4th Floor, admeasuring 173.26 Sq. meters to the erstwhile owners. The total basic sale consideration of the said unit is Rs. 1,19,06,498/-. That, the Complainants / erstwhile owners had made a total payment of Rs. 1,13,34,326/- to the respondent.
20. That in terms of the clause 3.1 of the agreement, the respondent was under an obligation to hand over the actual, vacant, physical possession of the apartment to the complainants within a period of 4 years with a grace period of 9 months from the date of commencement of construction or execution of the agreement or date of obtaining all

licenses, permissions or approvals for commencement of construction, whichever is later i.e. on or before 17.03.2018 subject to force majeure.

21. That in terms of the clause 3.5 of the agreement, the complainants agreed that, if the respondent failed to complete the construction of the apartment within the stipulated period as mentioned in the agreement due to force majeure circumstances or for other reasons as stated in the agreement or some other circumstances beyond its control then he agreed that the respondent would be entitled to reasonable extension of time for completion of construction of the said project and the delivery of possession of the apartment to him.
22. It is further stated that sometime in the year 2013, one Mr. Ballu Ram filed a writ petition (CWP No. 17737 of 2013) before the Hon'ble High Court of Punjab and Haryana challenging grant of license no. 170 of 2008 issued by DTCP. The Hon'ble High Court vide order dated 16.08.2013 directed the parties to maintain status-quo with regard to transfer and construction in respect to the said project of the respondent herein. In view of the aforesaid orders passed by the Hon'ble High Court of Punjab and Haryana, the respondent failed to continue with any kind of construction at the project site. All the construction work at the project site came to stand still for about 15 months. The Hon'ble High Court of Punjab and Haryana vide order dated 17.11.2014 dismissed the said writ petition.

23. That it is further pertinent to bring to the notice of this authority that certain disputes arose between M/s. Capital Builders and the respondent. In an Appeal [EFA-15-2015 (O&M)] filed by M/s. Capital Builders against the respondent before the Hon'ble High Court of Punjab and Haryana, and vide order dated 10.09.2015, it restrained the respondent from creating any third-party interest in respect unsold flats. The said order was modified vide order dated 08.05.2019 and excluded 60 un-sold flats from the ambit of the stay order.
24. That the respondent in the process of completing and developing the said project and will deliver the possession of the apartment to the complainants within an abbreviated period of time. It is further stated that the authority has granted registration of the said project under Act of 2016 and it has also applied for extension of validity of registration of the project with the requisite fees. The development of the project is in an advance stage.
25. That as per terms of clause 3.5 of the agreement, if it failed to complete the construction of the apartment within the period as mentioned in the agreement due to force majeure circumstances or for other reasons as stated in the agreement or some other circumstances beyond its control, then the respondent is entitled to reasonable extension of time for completion of construction of the project and delivery of the possession of the apartment to the complainants. Further, as per the said clause 3.5

of the agreement, the complainants are not entitled to any interest or refund of the amount paid to the respondent.

26. It is pertinent to state that the Complainants herein are not the Original Allottee of the aforementioned Apartment. The Original Allottee / erstwhile owners vide Agreement to Sale dated 24th July, 2017 transferred the aforementioned Apartment to the Complainants. It is also relevant to state that the No objection certificate dated 26th July, 2017 was issued by the Respondent to the Complainants for substitution of name in the aforementioned Apartment. That the Respondent vide letter dated 04.08.2017, confirmed the substitution of name.
27. That in view of the circumstances beyond its control, it was unable to complete the construction and deliver the possession of the apartment to the complainants within the stipulated period of time and there is no failure on the part of the respondent and as such the present complaint is not maintainable.
28. That the present complaint along with the reliefs sought is not maintainable before this authority as it does not have the jurisdiction to award any relief prayed for. As such, the present complaint is not maintainable.
29. 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.

E. Jurisdiction of the authority

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

30. 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

The 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.

31. 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 objections raised by the respondent:

F.I Objection regarding force majeure circumstances.

32. The respondent-promoter alleged that there was no delay on its part and the delay in completing the project and handing over the possession of the allotted unit was on account of force majeure circumstances such as stay on construction by Hon'ble High Court of Punjab & Haryana challenging grant of license no. 170 of 2008 issued by DTCP in writ petition (CWP No. 17737 of 2013) and due to a dispute arising between M/s. Capital Builders and the respondent, in an appeal [EFA-15-2015 (O&M)] filed by M/s. Capital Builders against it before the Hon'ble High Court of Punjab and Haryana vide order dated 10.09.2015 restraining creation of any third-party interest in respect unsold flats modified vide order dated 08.05.2019 and excluded 60 un-sold flats from the ambit of the stay order. But the authority is of view that the pleas taken by the respondent are devoid of merits.

33. The respondent also took a plea that the construction of the said project was stopped due to orders of Hon'ble High Court of Punjab & Haryana in writ petition (CWP No. 17737 of 2013) challenging grant of license no. 170 of 2008 issued by DTCP and ban on creating third party rights vide order of Hon'ble High Court of Punjab and Haryana in an appeal [EFA-15-2015

(O&M)] filed by M/s. Capital Builders against the respondent. The respondent pleaded that such period should not be considered while calculating the delay in completion of the subject unit. The authority is of considered view that such ban on construction and transfer of unsold unit would affect the construction activities at project site and the respondent was not at fault in fulfilling his obligation. The respondent should approach the competent/deciding authority for getting this time period be declared as 'zero time period' for computing delay in completing the project. However, for the time being, the authority is not considering this time period as zero period and the respondent is liable for delay in handing over possession as per provisions of the Act. जयते

G. Findings regarding relief sought by the complainants.

G.I Direct the respondent to make payment towards delayed possession charges at the prevailing rate of interest of 9.8% on the amount paid by them complainants i.e. Rs. 11,10,763.95/- for the delay in handing over the possession of the said flat to them and direct the respondent to make payment towards future and pendent lite delayed possession charges on monthly basis to the tune of Rs. 92,563.66/- to them till the date of handing over the possession of the said flat;

34. In the present complaint, the complainants 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

If the promoter fails to complete or is unable to give possession of an apartment, plot or building, -

.....

Provided that where an allottees 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

35. As per clause 3.1 of the apartment buyer's agreement dated 08.08.2014, the possession of the subject unit was to be handed over by 08.05.2019. Clause 3.1 of the buyer's agreement provides for handover of possession and is reproduced below:

"As per clause 3.1: Subject to Clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the Seller and any restraints/ restrictions from any courts/authorities and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and having complied with all provisions, formalities, documentation, etc. as prescribed by the Seller, whether under this Agreement or otherwise, from time to time, the Seller proposes to offer to hand over the possession of the Apartment to the Purchaser(s) within a period of 4 (four) years (with a grace period of 9 (nine) months from the date of commencement of construction or execution of this Agreement or date of obtaining all licenses, permissions or approvals for commencement of construction, whichever is later, subject to Force Majeure The Purchaser(s) agrees and understands that the Seller shall be entitled to a grace period of 9 (nine) months after the expiry of 4 (four) years for offer to hand over the possession of the Apartment to the Purchaser. Any application for the occupation certificate in respect of the Project shall be filed in the due course. The Seller shall give Notice of Offer of Possession in writing to the Purchaser(s) with regard to the handing over of possession, where after, within thirty (30) days, the purchaser(s) shall clear his outstanding dues and complete documentary formalities and take physical possession of the Apartment.."

36. As per said clause, the due date of handing over of possession is to be calculated from the date of commencement of construction or execution of this agreement(08.08.2014) or date of obtaining all licenses, permissions or approvals for commencement of construction (EC- 15.10.2013), whichever is later. The due date for handing over of possession is calculated from date of execution of this agreement i.e. 08.08.2014, being later. As such due date of handing over of possession comes out to be 08.08.2018 without considering admissibility of grace period.

37. The flat buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builders/promoters and buyers/allottees are protected candidly. The apartment buyer's agreement lays down the terms that govern the sale of various kinds of properties like residential, commercials etc. between the buyer and builder. It is in the interest of both the parties to have a well-drafted flat buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision about the stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the right of the buyer/allottees in case of delay in possession of the unit. In pre-RERA period it was a general practice among the promoters/developers to invariably draft the terms of the apartment buyer's agreement in a manner that benefited only them. It had arbitrary, unilateral, and unclear clauses that either blatantly favoured the promoters/developers or gave them the benefit of doubt because of the total absence of clarity over the matter.
38. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, 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 promoter.

The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by him in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment time period for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of the 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 allottees is left with no option but to sign on the dotted lines.

39. **Admissibility of grace period:** As per clause 3.1 of buyer's agreement dated 08.08.2014, the respondent-promoter has proposed to handover the possession the said unit within a period of 4 years with a grace period of 9 months from the date of commencement of construction or execution of this agreement or date of obtaining all licenses, permissions or approvals for commencement of construction, whichever is later, subject to force majeure circumstances. The said possession clause incorporates unqualified reason for grace period/extended period of 9 months. Accordingly, the authority literally interpreting the same and allows this grace period of 9 months to the promoter at this stage. Therefore, grace

period of nine months as per clause 3.1 of buyer's agreement is allowed and included while calculating the due date of handing over of possession.

40. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges however, proviso to section 18 provides that where an allottees 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.

41. 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.

42. 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 %.

43. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottees, as the case may be.

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default.*
- (ii) the interest payable by the promoter to the allottees 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 allottees to the promoter shall be from the date the allottees defaults in payment to the promoter till the date it is paid;"*

44. 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.

45. 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 buyer's agreement executed between the parties, the possession of the subject apartment was to be



delivered within a period of 4 years with a grace period of 9 months from the date of commencement of construction or execution of this Agreement or date of obtaining all licenses, permissions or approvals for commencement of construction, whichever is later. As per documents available on record the dates of environment clearances, commencement of construction and date of executing agreement between the parties are 15.10.2013, the date of commencement of construction has not been provided by respondent in the reply and 17.06.2013 respectively. The due date of handing over of possession is calculated from date of execution of agreement i.e. 08.08.2014, being later. As such, the due date of handing over of possession including grace period of 9 months comes out to be 08.05.2019. No occupation certificate of the project has been obtained by the respondent.

46. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the apartment buyer's agreement 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 allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e. 08.05.2019 till offer of possession plus two months or handing over of possession, whichever is earlier, 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.



47. In the present case the said unit was endorsed in the favour of the complainants in the year July 2017 i.e., before the due date of handing over of possession of the unit. As decided in **complainant no. 4031 of 2019 titled as Varun Gupta Vs. Emaar MGF Land Limited**, the authority is of the considered view that in cases where the subsequent allottee had stepped into the shoes of original allottee before the due date of handing over possession, the delayed possession charges shall be granted w.e.f. due date of handing over possession.

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 obligation cast upon the promoter as per the function entrusted to the authority under section 34(f) of the act of 2016:

- i. The respondent is directed to pay delay possession charges at the prescribed rate of interest i.e., 10.75% p.a. for every month of delay on the amount paid by the complainants to the respondent from the due date of possession i.e. 08.05.2019 till offer of possession plus two months, after obtaining occupation certificate or handing over of possession, whichever is earlier as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- ii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules and thereafter monthly payment of interest to be paid till date

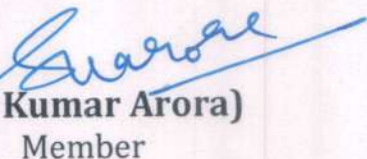


of handing over of possession shall be paid on or before the 10th of each succeeding month.

- iii. The respondent shall not charge anything from the complainants which is not the part of the flat buyer's agreement.
- iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be 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 allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- v. The respondent is directed to issue a fresh statement of account after adjusting delay possession charges within 15 days from date of this order.
- vi. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and thereafter payment of such dues, if any, the respondent shall handover the possession of the allotted unit complete in all aspects as per specifications of buyer's agreement after obtaining occupation certificate from competent authority.

49. Complaint stands disposed of.

50. File be consigned to registry.


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 25.08.2023