


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

Complaint no.: 1342 of 2019
First Date of Hearing: 05.12.2019
Order reserved on: 26.10.2023
Order Pronounced on: 07.12.2023

Smt. Savitri Sharma

R/o:- VPO-Khandsa, District and Tehsil
Gurugram, Haryana

Complainant


Versus

1. M/s Maxworth Infrastructure Pvt. Ltd.

Regd. Office at: F30-31, First Floor, MGF
megacity mall, M.G Road, Gurugram-122002

2. Murliwala Realcon Private Limited

Regd. Office at: 10th floor, Tower 9, Building B,
DLF Cyber City, Phase 3, Gurugram-122002

Respondents

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Satish Sharma (Advocate)

Sh. Shankar Wig (Advocate)

Complainant

Respondents

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 thereunder or to the allottees 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.	Heads	Information
1.	Project name and location	"City Residences" at Village Kadipur , Sector 10 A , Gurugram, Haryana.
2.	Nature of the project	Group housing colony
3.	HRERA registered/ not registered	Registered vide no. 252 of 2017 dated 09.10.2017
	HRERA registration valid up to	08.10.2021
4.	Allotment letter	06.02.2014 (As per page no. 38 of the complaint)
5.	Unit no.	0402 4 th floor block C (As per page no. 38 of the complaint)
6.	Unit measuring	1200 sq. ft. (As per page no. 38 of the complaint)
7.	Date of execution of buyer's agreement	07.02.2014 (As per page no. 26 of the complaint)
8.	Possession clause	14. Possession Possession and use <i>Developer will based on its present plans and estimates and subject to all just exceptions, contemplates to give / offer possession of unit to buyers within 36/3 months/ years from the date of commencement of construction of that particular tower where buyer unit is located with a grace period of 6</i>



		<i>months subject to force majeure events or governmental action/inaction...</i> [Emphasis supplied] (As per page no. 36 of the complaint)
9.	Date of commencement of construction	15.12.2014 (As already observed by the Authority in CR No.643/2019)
10.	Due date of delivery of possession	15.12.2017
11.	Basic sale price	Rs.54,00,000/- (As per page no. 28 of the complaint)
12.	Total amount paid by the complainant	Rs.61,65,131/- (As alleged by the complainant in the facts)
13.	Date of occupation certificate	Not Obtained
14.	Date of offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That the respondents had given wide publicity in the newspapers and in the pamphlets/brochures that they are going to develop Sector 10-A, Kadipur, and allured the residents as well as general public to apply for the allotment of flats/apartments. That the complainant being allured by the false representation of the respondents had booked a unit admeasuring 1200 sq. ft. unit no. 0402 Block C in the project "City Residences" of the respondent.
- II. That at the time of booking it was assured and promised that at the time of finalisation of the project, the respondents will give all the relevant

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details and area being allotted to the complainant. It is also relevant to mention here that the respondents made various demands for release of payment and complainant had duly paid the amount of Rs.61,65,131/- as per request/demand of the respondents.

- III. That though the complainant had paid more than 100% payment against demands of the respondents raised from time to time. But it is astonished to note that whenever complainant approached to office of the respondents regarding location and details of the unit to be allotted to her, they gave evasive replies and put off the matter on one pretext or the other.
- IV. That after sufficient period of time, the respondents executed an apartment buyer's agreement on 07.02.2014. The respondents intentionally and knowingly not mentioned the exact delivery schedule of the apartment but only given the size which is irrelevant from all points of view.
- V. That the complainant contacted the respondents on various occasions through telephone as well as by writing various emails and letters and requested for refund of the amount along with interest already paid to the respondent but on each and every time respondents given the promise that they will definitely give the exact delivery schedule within short period.
- VI. That the complainant also made a request before CM Window and in response to the above, the respondents wrote a letter dated 02.07.2018 wherein they have shown their inability that due to shortage of funds and their non-performance they could not complete the project and assured that they have arranged the funds from themselves and now complete the project within 2-3 months against the completion date of the project in the year 2017 i.e., within 3 years from the date of execution

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of Memorandum of Understanding. That the period of 2-3 months have also been exhausted on 02.10.2018 as per understanding given by the respondents vide letter dated 02.07.2018.

- VII. That after persistent efforts made by the complainant the respondents issued allotment letter dated 06.02.2014 wherein the respondents allotted Flat No. 0402, Block C admeasuring 1200 sq. ft. on 4th floor in the project to the complainant.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- I. Direct the respondent to handover the legal and rightful possession of the apartment.
 - II. Direct the respondent to pay interest for every month of delay at the prevailing rate of interest.
5. 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 no.1:

6. The respondent has contested the complaint on the following grounds:
- i. That the complaint is neither maintainable nor tenable and is liable to be at the threshold. The apartment buyer's agreement was executed between the parties to the complaint prior to the enactment of the Act of 2016 and the provisions laid down in the said Act cannot be applied retrospectively.
 - ii. That National Green Tribunal had passed the order dated 09.11.2017 completely prohibiting to carrying on construction by any person, private or government authority in the entire National Capital Region till 17.11.2017. Even the Haryana State Pollution Control Board, Panchkula

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had passed the order dated 29.10.2018 in furtherance of directions of Environment Pollution (Prevention and Control) Authority dated 27.10.2018, passed to ban construction activities involving excavation, civil construction (excluding internal finishing work/ work where no construction material was used) were directed to remain closed in Delhi and other National Capital Region / Districts from 01.11.2018 till 10.11.2018. Even more, in year 2019, the Commissioner, Municipal Corporation Gurugram vide order dated 11.10.2019, issued notification for prohibiting to carry out construction work from 11.10.2019 till 21.12.2019. It is specifically mentioned in the said order that construction activities to be completely stopped during this period. Thus, in view of aforesaid order / notifications passed by the various government agencies, the construction has been stopped due to high rise in pollution in Delhi NCR including the State of Haryana. Even the Hon'ble Additional Chief Secretary, Environment and Climate Change Department, vide its Memo no. 1 of 2021 dated 02.12.2021, has directed to stop carrying out construction activities due to high rise in pollution. It has been held in publication that *"All developers are also directed to depute their officials concerned to carry out patrolling in their licensed areas to ensure that even individual unit owners don't carry out construction."* There was complete ban on construction activities during the aforesaid period of time to complete the project from the year 2017 till year 2021. The respondent never had any such intention to delay the construction of project, intentionally or deliberately, but being a law abiding entity, has to stop its construction work in view of aforesaid orders. It is also to mention here that all the workers /labor went back to their hometown during the period of construction ban and, for a builder/ promoter, to resume the same speed of construction at that time, has become difficult

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due to shortage of labor force to complete the project. It is important to mention that the delay has been occurred due to the reasons beyond the control of the respondent but the respondent is trying to complete the project as soon as possible.

7. The present complaint has been filed by the complainant against two respondents i.e., M/s Maxworth Infrastructure Pvt. Ltd. as R1 and Murliwala Realcon Pvt. Ltd. as R2. The reply has been filed by the R1 only. Despite multiple opportunities, neither the R2 has filed the reply nor he had entered appearance. In view of the above, the defence of the R2 is struck off.
8. 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 on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

9. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection 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

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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) The promoter shall-
- (a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

10. 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 objections raised by the respondent no. 1:

F.I Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act

11. The contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the apartment buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with



certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)** which provides as under:

119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.....

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

12. Also, in appeal no. 173 of 2019 titled as **Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

13. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the apartment buyer's agreement has been executed in the manner that there is no scope left



to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

F.II Objection regarding delay due to force majeure circumstances

14. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as certain environment restrictions by Department of Environment and Climate Change and Haryana State Pollution Control Board, weather conditions in NCR region, increase in cost of construction material and shortage of labour, etc. But all the pleas advanced in this regard are devoid of merit. Therefore, it is nothing but obvious that the project of the respondent was already delayed, and no extension can be given to the respondent in this regard. The events taking place such as restriction on construction due to weather conditions were for a shorter period of time and are yearly one and do not impact on the project being developed by the respondent. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

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 of 18% per annum

15. The due date of possession of the apartment as per possession clause of apartment buyer's agreement is to be calculated 36 months from the date of commencement of that particular tower where buyer's unit is located. The date of commencement of construction is observed by the Authority in another complaint CR No. 643/2019 of the same project is 15.12.2014. The



due date of possession comes out to be 15.12.2017, as per the possession clause of apartment buyer's agreement.

16. Admissibility of delay possession charges at prescribed rate of interest:

In the present complaint, the complainant intend 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."

(Emphasis supplied)

17. The complainant is seeking delay possession charges at the prescribed rate as per the Act of 2016. Section 18 provides that where an allottee does not intend to withdraw from the project, she 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.

18. 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

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and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

19. 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., 14.12.2023 is **8.75%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.75%**.

20. 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;"*

21. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.75% by the respondents /promoter which is the same as is being granted to the complainant in case of delayed possession charges.

22. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondents are in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. The due date of handing over possession is 15.12.2017. No document is placed on record to show that after completing the unit, OC has

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been obtained or even applied to the competent Authority. Therefore, the respondents have failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondents/promoter to fulfil its obligations and responsibilities as per the 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 respondents are established. As such the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 15.12.2017 till offer of possession of the said unit after obtaining the occupancy certificate from the concerned authority plus two months or actual handing over of possession, whichever is earlier, at prescribed rate i.e., 10.75 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

H. Directions of the Authority:

23. 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 respondents are directed to pay interest on the paid-up amount by the complainants at the prescribed rate of 10.75% p.a. for every month of delay from the due date of possession i.e., 15.12.2017 till offer of possession of the said unit after obtaining the occupancy certificate from the concerned authority plus two months or actual handing over of possession, whichever is earlier.
 - ii. The complainant is directed to pay outstanding dues, if any remains after adjustment of interest for the delayed period, the respondents shall handover the possession of the allotted unit on obtaining of occupation certificate.


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- iii. The arrears of such interest accrued from 15.12.2017 till the date of order by the authority shall be paid by the promoter to the allottee(s) within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee(s) before 10th of the subsequent month as per rule 16(2) of the rules.
- iv. The respondent shall not charge anything from the complainant which is not the part of the apartment buyer's agreement.
- v. The rate of interest chargeable from the allottee(s) by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.75% by the respondents/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.

24. Complaint stands disposed of.

25. File be consigned to registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.12.2023