

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

Complaint no.: 1126 of 2022
Date of filing : 21.03.2022
Date of decision : 23.02.2024

Satish Kumar Sharma

R/o: Hno. 698, Dalipgarh, Ambala Cantt, Ambala,
Haryana

Complainant

Versus

M/s Landmark Apartments Private Limited

Regd. office: Landmark house, 65, Sector 44,
Gurugram, Haryana

Respondent

CORAM:

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Shri. Jagdeep Kumar(Advovate)

Shri. Amarjeet Kumar(Advocate)

Complainant

Respondent

ORDER

1. The present complaint 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 to the allottees as per the agreement for sale executed inter-se them.

A. Unit and Project related details:



2. The particulars of the project, the details of 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. N.	Particulars	Details
1.	Name of the project	"Landmark-The Residency", Sector 103, Gurugram
2.	Project area	10.868 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no. and validity status	33 of 2011 dated 31.05.2011 valid upto 15.04.2021
5.	Name of licensee	Basic Developers Pvt. Ltd. and 2 others
6.	RERA Registered/ not registered	Not registered
7.	Allotment Letter	28.02.2013 (Page 19 of complaint)
8.	Unit no.	A-16, 1 st Floor, Tower A (Page 33 of complaint)
9.	Unit area admeasuring	1710 sq. ft. (Page 33 of complaint)
10.	Date of space buyer agreement	01.11.2014 (Page 21 of complaint)
11.	Possession clause	10.1 SCHEDULE FOR POSSESSION OF THE SAID APARTMENT "The Developer/Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete



		<p>construction of the said Building/said Apartment within a period of Four years (48 Months) from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in Clauses 11/1. 11.2 11.3 and Clause 41 or due to failure of Intending Allottee(s) to pay in time the price of the said Apartment along with other charges and dues in accordance with the schedule of payments given in Annexure For as per the demands raised by the Developer/Company from time to time or any failure on the part of the Intending Allottee(s) to abide by all or any of the terms or conditions of this Agreement. The Intending Allottee(s) agrees and undertakes that the company shall be entitled for a period of six months for the purpose of fit outs and a further period of six months on account of grace over and above the period more particularly specified here-in-above".</p>
12.	Due date of possession	01.05.2019 (Calculated as 4 years from date of execution of BBA plus 6 months grace period) GRACE PERIOD IS ALLOWED
13.	Total sale consideration	Rs. 97,59,650/- (Page 33 of complaint)
14.	Amount paid by the complainants	Rs. 74,07,377/- (As alleged by complainant on page 9 of complaint)



15.	Surrender of 1 unit out of two booked units and adjusting the amount w.r.t. the subject unit.	24.06.2017 (Page 87-88 of complaint)
16.	Occupation certificate /Completion certificate	25.09.2020
17.	Offer of possession	11.12.2018 [pg. 96 of reply]

B. Facts of the complaint

3. The complainant has made the following submissions: -

- a. That somewhere in the month of June 2012, the respondent through its business development associate approached the complainant with an offer to invest and buy a flat in the proposed project of respondent, which the respondent was going to launch the project namely "Landmark The Residency" in the Sector-103, Gurugram (hereinafter referred to as "Said Project"). On 26.06.2012 complainant had a meeting with respondent at the respondents branch office "**Landmark House 85P, Sector 44, Gurgaon 122003**" where the respondent explain the project details of "Landmark The Residency" and highlight the amenities of the project (landmark the residency) like Tennis Court, Retail Area, Skating Ring, Modern Club House with gym, Jacuzzi, spa & Swimming Pool , Amphitheater and many more and told that tower A, and B is only available for advance booking, on relaying on these details complainant enquire the availability of flat on first floor in tower A which was a unit consisting area 1710 sq. ft. Respondent represented to the complainant that the respondent is a very ethical business house

in the field of construction of residential and commercial project and in case the complainant would invest in the project of respondent then they would deliver the possession of proposed flat on the assured delivery date as per the best quality assured by the respondent. The respondent had further assured to the complainant that the respondent has already processed the file for all the necessary sanctions and approvals from the appropriate and concerned authorities for the development and completion of said project on time with the promised quality and specification. The respondent had also shown the brochures and advertisement material of the said project to the complainant given by the respondent and assured that the allotment letter and builder buyer agreement for the said project would be issued to the complainant within one week of booking to made by the complainant. The complainant while relying upon those assurances and believing them to be true, complainant booked two residential flats in the proposed project of the respondent measuring approximately super area of 1710 Sq. ft. (158.862 Sq. meter) each in the township to be developed by respondent. Accordingly the complainant have paid ₹7,00,000/- through cheque bearing no 191185 dt 26.06.2012 as booking amount for flat bearing no. A-16, first floor , tower - A, landmark the residency, sector 103 and ₹ 7,00,000/- through Cheque bearing No. 191186 dt 26.06.2012 for another residential unit of 1710 Sq. ft. area.'

- b. That in the said application form, the price of the said flat was agreed at the rate of ₹ 4360/- per sq. ft. At the time of execution



of the said application form, it was agreed and promised by the respondent that there shall be no change, amendment or variation in the area or sale price of the said flat from the area or the price committed by the respondent in the said application form or agreed otherwise. That approximately after six months on 28.02.2013 the respondent issued a provisional allotment letter for unit bearing no. A-16, First Floor, Tower - A, Landmark The Residency, Sector 103, Gurgaon.

- c. That on 01.11.2014 the respondent signed buyer's agreement with complainant, which consisting very stringent and biased contractual terms which are illegal, arbitrary, unilateral and discriminatory in nature, because every clause of agreement is drafting in a one-sided way and a single breach of unilateral terms of buyers agreement by complainant, will cost him forfeiting of 15% of total consideration value of unit. Respondent exceptionally increase the net consideration value of flat by adding EDC and IDC, when complainant opposed the unfair trade practices of respondent they inform that EDC and IDC are just the government levies and they are as per the standard rules of government and these are just approximate values which may come less at the end of project and same can be proportionately adjusted on prorata basis and about the delay payment charges of 24% they said this is standard rule of company and company will also compensate at the rate of ₹5 per sq. ft. per month in case of delay in possession of flat by company. Respondent also made a unilateral provision of holding charges at the rate of ₹5 per sq. ft. per month in one sided buyer's

agreement. Complainant opposed these illegal, arbitrary, unilateral and discriminatory terms of provisional allotment letter but as there is no other option left with complainant because if complainant stop the further payment of installments then in that case respondent forfeit 15% of total consideration value from the total amount paid by complainant.

- d. That as per the clause - 10.1 of the said flat buyer's agreement dated 1st November 2014, the respondent had agreed and promise to complete the construction of the said flat and deliver its possession within a period of 48 months from the date of execution of buyer's agreement. That from the date of booking 26 June 2012 and till 29th Oct 2014, the respondent had raised various demands for the payment of installments on complainant towards the sale consideration of said flat and the complainant have duly paid and satisfied all those demands as per the flat buyers agreement without any default or delay on their part and have also fulfilled otherwise also their part of obligations as agreed in the flat buyers agreement. The complainant were and have always been ready and willing to fulfill their part of agreement, if any pending.
- e. That as per clause 1.1 (price payable for the said apartment) of buyer's agreement the sales consideration for said flat was ₹97,59,650/- exclusive of service tax and GST. That on 24th June 2014 the complainant requested the respondent to cancel one (3 BHK residential flat) out of two (3 BHK residential flats) booked by the complainant on 26th June 2012, and transfer & adjust the entire amount of ₹18,44,371/- paid against the cancelled flat to

another residential flat bearing no. A16, Tower A, Landmark The Residency, Sector 103, Gurugram. Complainant also submit indemnity bond dated 23rd June 2014 on request of respondent to give immediate effect to the transaction.

- f. That the complainant has paid the 75% of sale consideration along with applicable taxes to the Respondent for the said flat. Complainant have already paid ₹ 74,04,377/- towards total sale consideration and applicable taxes as on today to the respondent as demanded time to time.
- g. That on the date agreed for the delivery of possession of said unit as per date of booking and later on according to the flat buyers agreement is 1st November 2018, the complainant had approached the respondent and its officers for inquiring the status of delivery of possession but none had bothered to provide any satisfactory answer to the complainant about the completion and delivery said flat. The complainant thereafter kept running from pillar to post asking for the delivery of his home but could not succeed in getting any reliable answer.
- h. That the conduct on part of respondent regarding delay in delivery of possession of the said flat has clearly manifested that respondent never ever had any intention to deliver the said flat on time as agreed. It has also cleared the air on the fact that all the promises made by the respondent at the time of sale of involved flat were fake and false. The respondent had made all those false, fake, wrongful and fraudulent promises just to induce the complainant to buy the said flat basis its false and frivolous promises, which the respondent never intended to

fulfill. Till today 27th Feb 2022 the boundary wall of the project site not completed, main entrance gate not constructed and no amenities (club house, swimming pool etc.) are visible on the ground. The respondent in its advertisements had represented falsely regarding the delivery date of possession and resorted to all kind of unfair trade practices while transacting with the complainant.

- i. That the GST Tax which has come into force on 01.07.2017, it is a fresh tax. The possession of the apartment was supposed to be delivered to complainant on 01st November 2018, therefore, the tax which has come into existence after the due date of possession (01st November 2018) of flat, this extra cost should not be levied on complainant, since the same would not have fallen on the complainant if respondent had offer the possession of flat within the time stipulated in the builder buyer agreement.
- j. That respondent have issued an intimation regarding offer of possession through letter dated 09.12.2020, The offer of possession by the respondent was an invalid offer of possession because as the respondent sent offer of possession letter without completing the construction work at site, and the said offer of possession letter also accompanied with unreasonable additional demands which are unilateral, arbitrary and contrary to the buyer's agreement signed on 1st November 2014.
- k. On 10.03.2021 complainant visited the project site to see the progress of the project and found that construction work was going on at the site and boundary wall of the project was not even built by the respondent by that time. Complainant shared

the issue with respondent by visiting them on same day 10th March 2021 at respondent's branch office at Gurugram, complainant inform respondent that respondent is creating anomaly by not delivering the possession of said flat and also inform respondent for compensating the complainant for delay possession charges at the rate of interest specified in RERA Act 2016. Complainant makes it clear to respondent that, if respondent not compensates the complainant at the same rate of interest then complainant will approach the appropriate forum to get redressal.

- i. That that complainant visited the respondents office on 01.03.2022 to draw attention of the Respondent towards incomplete and the pending construction work of the project and the unit, which is without fixers, fittings, paint or polish even without electricity fittings and the same is in dilapidated conditions and attached photographs in support. The complainant demanded interest for delayed possession period as per RERA Act 2016 and urges respondent to complete the construction activities at project and withdraw such unreasonable demands. As on 01.03.2021 the respondent did not completed the construction activities at project site. Complainant visited the site and found that till date, sanitary connection were not done, floor tills and plastering work is still not completed in the flat.

C. Relief sought by the complainants:

4. The complainant has sought following relief:

- a. To direct the respondent to pay interest at the rate of 18% on account of delay in offering possession on the amount paid by the complainant from the date of payment till the date of delivery of possession.
- b. To pass an order to restrain the respondent from changing any amount as GST tax from the complainant.
- c. To pass an order to direct the respondent to update on construction status of project and immediately provide possession of said flat without taking affidavit cum undertaking.
- d. Litigation cost-₹55,000/-.

D. Reply filed by the respondent:

5. The respondent has contested the complaint on the following grounds:
 - a. That the provisional allotment / application form/bba was executed by the complainant and, as such, the complainant is bound by the terms and conditions mentioned therein. The complainant was neither forced nor influenced by the opposite parties to execute the application form. It was complainant who after understanding the clauses signed the said provisional allotment/application form in his complete senses.
 - b. That the respondent has completed the project within the reasonable time but the complainant failed to make the payment of the dues in terms of the provisional allotment/application form/BBA. It is further submitted that the burden of delay caused in the grant of the occupation certificate cannot be placed on the respondent. Despite force majeure conditions the respondent has completed the construction of the project within

the agreed time limit and occupancy permission from the competent authority was duly applied for on 22.04.2019 and the OC was received on 25.09.2020. That it is pertinent to mention here that since the respondent had applied for the OC on 22.04.2019 and since there was no objection raised by the Competent Authorities, a deemed OC was already existing in the favor of the respondent. It is submitted that at the time when the OC was applied, the project was complete in all the respects as the competent authorities had granted the OC only on 25.09.2020 after processing the same application only. The said factum is borne out from fact that the exact date of the application for grant of occupation certificate i.e. 22.04.2019 is mentioned in the copy of the occupation certificate which goes on to prove that the said application was complete in all respects.

- c. That this time period of 1 year and 5 months taken by the competent authorities for granting the OC cannot be considered as the delay in delivering the possession of the apartment, since on the day the respondent developer applied for OC, the apartment was complete in all respects. The delay in grant of OC falls under force majeure as it is beyond the control of the respondent developer and is duly recorded in the apartment buyer's agreement. It is relevant to mention here that the construction of the project was effected on account of unforeseen circumstances beyond the control of the respondent developer. In the year, 2012 on the directions of the Hon'ble

Supreme Court of India, the mining activities of minor minerals (which includes sand) was regulated.

- d. Hence, it is apparent from the perusal of the aforementioned clause that the complainant is entitled to the extension of time in the instant case as the delay of more than one year in the grant of occupation certificate is not attributable to the complainant. The complainant herein would also like to bring to the notice of this Hon'ble Authority that the year 2020 has been a year marked by the spread of coronavirus in the entire world and a nationwide lockdown was imposed in the country. The situation has been unprecedented and we have still not been able to release ourselves from the clutches of this COVID-19 pandemic. It is most likely on account of this reason that the grant of the occupation certificate was delayed to such an extent. Be whatever the reason, the complainant in no case can be held responsible/accountable for the delay that has taken place in the grant of the occupation certificate by the relevant/competent authorities in the instant case.
- e. That the complainant is not liable to get any relief except in terms of the allotment letter as in the facts and circumstances of the present case as he himself has failed to make the payment against the demand notices. The respondent is ready to deliver the possession of the unit to the complainant provided the complainant makes the payment of all dues/applicable charges in terms of the allotment. It is submitted that non payment of the instalments or delayed payment against the demand notices leads to issues/problems and delays in the completion of the

project because of paucity of funds. Therefore, the BBA contained a clause regarding time being the essence with respect to the allottees obligation to pay as per the schedule of payment. It is further pointed out that all the demands were raised as per the terms and conditions as well as schedule of payment attached with the BBA executed between the parties.

- f. That the complainant has committed various defaults in the making of the payment in terms of the provisional allotment / application form/BBA. The conduct of the complainant clearly highlights the fact that the complainant had no interest or intention to conclude the sale owing to the changing economic conditions and recession. The moment the complainant realized that conclusion of the sale in his favour may not benefit him much anymore, he backtracked and now wants to take undue advantage of his own wrong. The complainant failed to make payments as stipulated in the schedule of payments along with various other dues and charges and as such the unit of the complainant was cancelled. That no case of compensation is made out in the facts and circumstances of the present case and owing to the conduct of the complainant as well as the fact that the project has been completed within the stipulated period of time by the respondent.
- g. It is submitted that the complainant in order to make profit due to the booming real estate scenario booked two units. However, he could not make the payment of instalments and requested vide letter dated 24th of June 2014 for the cancellation of one unit and adjustment of amount in the other retained unit. The

request of the complainant was granted but still the complainant failed to make the payment of the outstanding in terms of the agreement. It is submitted that the respondent has not come to clear the outstanding dues and take the delivery of the possession of the unit. Hence the complainant failed to take the delivery of the possession in terms of the agreement and thus the respondent is liable to be compensated in this regard.

- h. That the complainant in the instant case has committed a fundamental and deliberate breach of the terms and the conditions of the provisional allotment / application form. It is pertinent to mention that the non-performance of the obligations as stipulated in the provisional allotment / application form is willful, deliberate and improper on the part of the complainant and the complainant cannot be permitted to take advantage or benefit on account of his own wrongful acts/omissions.
- i. That the complainant is not a consumer and an end user since he had booked two apartments in the project namely "landmark the residency" purely for commercial purpose as a speculative investor and to make profits and gains. Further, the complainant invested in many projects of different companies which prove that the complainant is not a consumer but only an investor. Thus, it is clear that the complainant invested in the unit in question for commercial gains, i.e. to earn income by way of rent and/or re-sale of the property at an appreciated value and to earn premium thereon. Since the investment has been made for the aforesaid purpose, as such the complainant is not interested

to execute the contract owing to the slow and sluggish economic growth. The complaint is liable to be dismissed on this ground alone.

- j. That the complainant has defaulted in making payment on time contrary to the agreed terms. It is submitted that on many occasions repeated demand letters and reminders were issued to the complainant for payment. Even after repeated demands complainant did not make the payments on time. Hence, complainant is not entitled to get any reliefs from this Hon'ble Authority. Therefore, it is the respondent who after having spent sums of money has been unable to realize the proceeds of the service apartment from the complainant and its legitimate dues have been withheld by the complainant and therefore, on account of such breaches and defaults of the complainant it is the respondent who is entitled to claim compensation from the complainant. It is submitted that the unit of the complainant was rightly cancelled on account of non-payment of the dues however being a customer oriented company, the respondent is ready to give possession of the unit subject to clearance of the outstanding dues along with delay interest.
- k. It is submitted that the occupation certificate has been granted on 25.09.2020, the complainant did not make the payment against demand notices raised by the respondent. It is submitted that the complainant by way of present complaint is claiming the refund of the amount paid along with interest and other reliefs. It is further submitted that if refund is allowed, other buyers/ customers who have invested their hard earned money in the

complex will suffer irreparable losses and the complex will never be made fully occupied if such an approach continues. Thus, to protect the interest of one person, the Hon'ble Authority can't jeopardize the interest of others who are genuine purchasers and are not mere speculators.

6. 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 submissions made by the complainants.
7. Written arguments on behalf of complainant & respondent have been filed on 18.12.2023 & 22.12.2023 respectively and the authority have taken cognizance of the same.

E. Jurisdiction of the authority

8. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

E. I Territorial jurisdiction

9. 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

10. 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;

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."

11. 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 complainants at a later stage.

F. Findings regarding relief sought by the complainants.

F.I To direct the respondent to pay interest at the rate of 18% on account of delay in offering possession on the amount paid by the complainant from the date of payment till the date of delivery of possession.

12. 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

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.

24. As per clause 10.1 of the buyer's agreement dated 01.11.2014, provides for handover of possession and is reproduced below:

*"The Developer/Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/said Apartment within a period of **Four years (48 Months) from the date of execution of this Agreement** unless there shall be delay or there shall be failure due to reasons mentioned in Clauses 11/1, 11.2 11.3 and Clause 41 or due to failure of Intending Allottee(s) to pay in time the price of the said Apartment along with other charges and dues in accordance with the schedule of payments given in Annexure For as per the demands raised by the Developer/Company from time to time or any failure on the part of the Intending Allottee(s) to abide by all or any of the terms or conditions of this Agreement. The Intending Allottee(s) agrees and undertakes that the company shall be entitled for a period of six months for the purpose of fit outs and a further period of six months on account of grace over and above the period more particularly specified here-in-above."*

25. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, 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 promoters. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoters and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoters may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the flat buyer agreement by the promoters are just to evade the liability towards timely delivery of subject unit and to deprive the allottee of



his 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 allottee is left with no option but to sign on the dotted lines.

26. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of 48 months from date of agreement plus 6 months over and above 48 months. The authority calculated due date of possession according to clause 10.1 of the agreement dated 01.11.2014 i.e., within 48 months from date of execution. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period of 6 months in the possession clause subject to force majeure circumstances. Accordingly, this grace period of 6 months shall be allowed to the promoter at this stage
27. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges as one of the reliefs. 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.
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., 23.02.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
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 complainants shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same as is being granted to the complainants 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 10.1 of the agreement executed between the parties on 01.11.2014, the possession of the subject apartment was to be delivered within Four years (48 Months) from the date of execution of this agreement. The period of 48 months ends on 01.11.2018. As far as grace period of 6 months is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 01.05.2019. The respondent has offered the possession of the subject apartment on 11.12.2018 i.e., prior to receiving OC from the competent authority therefore, the said letter is not a valid offer of possession in eyes of law. Accordingly, it is the failure of the respondent/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 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., 01.05.2019 till valid offer of possession plus two months or handing over of possession whichever is earlier at prescribed rate i.e., 10.85% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

F.II. To pass an order to restrain the respondent from changing any amount as GST tax from the complainant.

33. This issue has already been dealt by the authority in complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.** wherein the authority has held that for the projects where the due date of possession was prior to 01.07.2017 (date of coming into force of GST), the respondent/promoter is not entitled to charge any amount towards GST from the complainant(s)/allottee(s) as the liability of that charge had not become due up to the due date of possession as per the builder buyer's agreements. For the projects where the due date of possession was/is after 01.07.2017 i.e., date of coming into force of GST, the builder is entitled to charge GST, but it is obligated to pass the statutory benefits of that input tax credit to the allottee(s) within a reasonable period. In the present complaint the due date of project comes out to be 01.05.2019 accordingly, the respondent is right in charging the GST from the complainant.

F.III. To pass an order to direct the respondent to update on construction status of project and immediately provide possession of said flat without taking affidavit cum undertaking.

34. Since, in the present matter OC have been received from the competent authority accordingly, it is presumed by the authority that the construction of the said tower is complete in all aspect except the finishing work. But since in the present matter no valid offer of possession has been issued by the respondent after obtaining OC accordingly the respondent is directed to issue a valid offer of possession under section 17(2) of the Act, 2016. The respondent is further directed not to place any condition or ask the complainants to sign an indemnity/undertaking of any nature whatsoever, which is prejudicial to their rights as has been decided by the authority in

complaint bearing no. **4031 of 2019 titled as Varun Gupta V. Emaar MGF Land Ltd**

F.IV. Litigation cost-₹55,000/-.

35. The complainant is claiming compensation in the above-mentioned reliefs. The authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee can claim. For claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may approach the Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

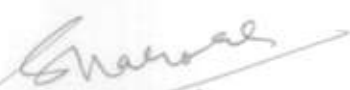
G. Directions of the authority

36. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:
- a. The respondent is directed to hand over the possession of the subject unit after issuing valid offer of possession and pay interest at the prescribed rate of 10.85% p.a. for every month of delay from due date of possession i.e., 01.05.2019 till valid offer of possession plus two months or handing over of possession whichever is earlier.
 - b. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoters 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. Accordingly, the respondent is directed to refund/adjust the excess amount charged on account of delay payment from the complainant if any.

- c. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period within 30 days from the date of issuance of valid offer of possession and the respondent shall handover the possession within the next 60 days to the complainants/allottees.
 - d. The respondent shall not charge anything from the complainants which is not the part of the agreement. However, holding charges shall not be charged by the promoters at any point of time even after being part of agreement as per law settled by Hon'ble Supreme Court in civil appeal no. 3864-3889/2020.
37. Complaint stands disposed of in view of the above findings.
38. File be consigned to registry.

HARERA
GURUGRAM


(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.02.2024