

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

Complaint no.	7010 of 2022
Date of filing complaint	11.11.2022
Date of decision	28.05.2024

Manisha Bhola Sharma R/o: E-1201, La Lagune, Sector-54, Gurugram	Complainant
Versus	
Manglam Multiplex Pvt Ltd Regd. Address at: Cabin-1, LGF, F-22, Sushant Shopping Arcade, Sushant Lok, Phase-1, Gurugram-122002.	Respondent
CORAM:	
Shri Arun Kumar	Chairman
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
APPEARANCE:	
Ms. Daggar Malhotra (advocate)	Complainant
Ms. Shriya Takkar and Smriti Srivastava (advocates)	Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall

be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	M3M 65 th Avenue, Sector-103, Gurugram
2.	Nature of the project	Commercial complex
3.	Area of the project	14.4125 acres
4.	Welcome letter dated	20.12.2017
5.	Date Of Allotment Dated	23.06.2017 (page 24 of reply)
6	Revised allotment letter	20.12.2017 (Page 29 of reply)
7	Unit no.	R2LG03
8	Unit area	845.62 SQ. FT.
9	Builder buyer agreement executed on	6.07.2018 (page no. 39 of complaint)
10	Possession clause	In clause 7.1 of the agreement, the builder agrees that the possession of the unit will be delivered before commitment period. (m) "Commitment Period" shall mean June, 2022 notified by the promoter to the Authority, at the time of registration of the project

		under the Act, for completion of the Project, or as may be further revised/ approved by the authorities..
11	Due date	31.12.2022 (including 6 months in lieu of Covid)
12	Total sale consideration	Rs. 2,31,12,486/-
13	Amount paid by the complainant	Rs. 2,49,31,790/-
14	Occupation certificate	30.09.2021 (page 94 of reply)
15	Notice for offer of possession	25.10.2021
16	Pre cancellation	25.11.2021 (page 103 of reply)

A. Facts of the complaint:

3. That vide allotment letter dated 23.06.2017, the respondent allotted one commercial unit no: R2LG03 having super area of 845.62 sq. ft. for a total sales consideration of Rs.2,31,12,486/- to the complainant. Accordingly, the complainant and the respondent entered into an agreement in respect to the said unit on 06.07.2018. The complainant till date paid a total amount of Rs. 2,49,31,790 /- and same was duly acknowledged by the respondent.
4. That, in September, 2021, the respondent received the occupation certificate for the said project and offered possession of the subject unit on 25.10.2021. Along with the offer of possession, the respondent had unduly added extraneous amounts mentioned as outstanding. The same were rebutted by the complainants as an erroneous figure and were later corrected by the respondent vide email dated 11.11.2021. The complainant complete all the formalities as required to be completed by the respondent for the same and

then vide email dated 16.06.2022 confirmed the completion of formalities and requested that she be allowed to take possession. The respondent failed to respond to the said request and thus, the complainant sent another reminder email dated 20.06.2022. Once again vide mail dated 06.08.2022, the respondent started seeking extraneous amount from the complainant which were once again rebutted by the complainant and the respondent agreed to its mistake and categorically mentioned no amount was due from the complainant's end vide email dated 10.08.2022. The notice for offer of possession dated 25.10.2021 sought for signing of certain documents containing terms contradictory to the rights of the complainant. The documents were namely:

- A. Indemnity Bond-cum Declaration-Cum-Undertaking.
- B. Facilitation Agreement.
- C. Special Power of Attorney.

The complainant refused to sign these above-mentioned documents as they contained terms which were in violation and contradiction to the rights of the complainant.

5. That the complainant refused to sign these documents and emailed the respondent dated 22.07.2022, 20.09.2022 clearly stating that the complainant was willing to take possession of the unit without signing these documents or with appropriate amendments in the said documents. Furthermore, the respondent kept delaying the possession by not allowing the complainant to take possession before signing the above- mentioned documents, mentioning the wrong address details owner/complainant in the documents. The complainant sent repeated reminders to the respondent regarding the same vide emails such as email dated 10.08.2022, 16.08.2022, 28.08.2022. The respondent has refused to give possession to the complainant until she signs

these documents and the respondent has threatened the complainant vide email dated 20.09.22 to sign the said documents within a period of 15 days in order to avoid imposition of holding charges on the said unit. The respondent has in unequivocal terms made it clear that the complainant shall not be allowed to take possession of the said unit till she signs the above- mentioned documents.

6. That the complainant has approached this Authority in view of the above facts and circumstances in order to refrain the respondent from compelling the complainant to give up her valuable rights by way of signing these violative documents in order to get possession of her unit in the respondent's project.

B. Relief sought by the complainant:

7. The complainant has sought following relief(s):
 - i. Direct the respondent to handover over of the possession of the flat to the complainant without requiring the Complainant to sign any Indemnity Bond-Cum-Declaration-Cum-Undertaking, facilitation agreement and special power of attorney.
 - ii. Direct the respondent to pay delay possession charges to the complainant for the period starting from June 2020 i.e., due date of possession till the date of actual handover of possession to the complainant as the respondent has not given actual handover of possession to the complainant till date on account of the complainant not signing the indemnity bond and facilitation agreement.

D. Reply by respondent:

The respondent by way of written reply dated 23.05.2023 made the following submissions:

8. That the booking form was received by the respondent company for a commercial unit in 'M3M 65th Avenue', a commercial component of the mixed land use development project of the respondent. In due consideration of the booking amount paid by the complainant and their commitments to comply with the terms of the booking/allotment and make timely payments of demands, the complainant along with her mother Ms. Mohini Bhola was allotted a commercial unit bearing No. R2 LG 03 in 'M3M 65th Avenue', a commercial component of the mixed land use development project of the respondent company, vide allotment letter dated 23.06.2017. The complainant being the allottee, on her own free will and after due understanding of the legal import and effect had opted for the specific payment plan. Vide letter dated 12.12.2017, respondent intimates the complainant about the change in building plan as earlier approved building plan bearing DTCP memo no. ZP-1147/SD(BS)/2017/11857 dated 01.06.2017 has been revised to ZP-1147/SD(BS)/2017/31514 dated 08.12.2017 with reference to unit no. R2 LG 03 and also requested the complainant to submit their objections if any. However, the complainant did not raise any objections with respect to the same. It is submitted that the respondent issued a revised allotment letter dated 20.12.2017 for the commercial unit No. R2 LG 03 in "M3M 65th avenue" in lieu of and/or in substitution of the earlier provisional allotment letter for commercial unit no. R2 LG 03. It was further informed to the complainants that the allotment of their commercial unit in "M3M 65th Avenue" stands substituted / varied / revised / altered and henceforth the allotment of the complainant would be referred to as commercial unit no. R2 LG 03 on the same terms and conditions as per the schedule of payments to be made as earlier.
9. It is submitted that in furtherance of the allotment, the respondent company had sent the agreement for sale to the complainant for due execution at her

end and the agreement for sale was executed between the parties on 06.07.2018. It is pertinent to mention that the buyers agreement duly covers all the liabilities and rights of both the parties

10. The respondent completed the construction way before the agreed timeline and applied for the OC on 30.04.2021. That the respondent received the occupation certificate from the competent authorities on 30.09.2021 after due verification and inspection.
11. It is submitted that the unit was ready and the respondent herein vide letter dated 25.10.2021 offered possession to the complainants herein and requested the complainants to remit outstanding amount towards the remaining basic sale price, service tax, cess, stamp duty charges etc.
12. That despite several requests and follow ups, the complainant failed to come forward to take over the possession and clear his dues, therefore the respondent was constrained to issue a pre-cancellation letter dated 25.11.2021.
13. All other averments made in the complaint were denied in toto.
14. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

15. 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 completed territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the 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.

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 relief sought by the complainant.

Relief sought by the complainant: The complainant has sought following relief:

- 1) Direct the respondent to pay delay possession charges to the complainant for the period starting from June 2020 i.e., due date of possession till the date of actual handover of possession to the

complainant as the respondent has not given actual handover of possession to the complainant till date on account of the complainant not signing the violative indemnity bond and facilitation agreement.

16. The complainant booked one commercial unit in the said project. Vide allotment letter dated 23.06.2017, the respondent allotted one commercial unit no: R2LG03 for a total sales consideration of Rs.2,31,12,486/-. Accordingly, the complainant and the respondent entered into a builder buyers' agreement in respect to the said unit. The Complainant have till date paid a total of Rs.2,49,31,790/- duly acknowledged as received by the respondent. In October, 2021, the respondent informed the complainant that the respondent had received the occupation certificate for the said project and were thus ready to offer possession. but, with the notice for offer of possession dated 25.10.2021, the respondent sought for signing of indemnity bond-cum-declaration-cum-undertaking and later asked the complainant to sign away her rights to use the unit by signing a special power of attorney and leasing/facilitation agreement. The complainant has refused to sign any of the above illegal documents and has not signed any till date on account of the above refusal to sign, the respondent has not given physical possession of the unit to the complainant and has illegally unilaterally broken down the walls of the unit of the complainant and is merging the unit with other units on the same floor to lease out to a lessee of respondent's choice. The respondent has no right to lease the unit of the complainant.
17. The respondent argued that the complainant was aware that the units were intended to be leased out by the respondent and had given consent or approval for their leasing. However, upon reviewing the records, it was noted that there is no documentation indicating that the complainant had indeed consented to the leasing out of the unit except the email dated 22.02.2022 wherein the complainant offering the leasing price.

18. Further, the complainant filed an application dated 14.02.2023 for seeking direction to the respondent not to create 3rd party rights and cease breaking down of walls of the unit. During proceeding of day dated 21.02.2023, the Authority directed the respondent not to create 3rd party rights and no changes (breaking down of the walls) in the unit may be undertaken till the next date of hearing.
19. On the contrary, the counsel for the respondent moved an application dated 12.03.2024 seeking clarification/modification of proceeding of day dated 21.02.2023 wherein respondent states that the complainant along with more than 60 other units as a one premises were leased out to Deerika operating under the brand name DJT retailers with the consent of all unit holders, to which the complainant raised an objection as she wanted her independent unit. The respondent builder is now handing over the unit to her for which purpose the walls etc, separating her unit from others units have to be constructed.
20. It is important to note that respondent has filed an application on 15.11.2023 stating 3 options to close the matter:
1. The complainant can take possession and accept the rental / lease money which is as per the prevailing market rates.
 2. The respondent is ready to offer an alternative unit in the same project.
 3. In case none of the above options are acceptable to the complainant then the respondent is willing to refund the amount deposited after deduction.
21. In the present complaint, the complainant intends to continue with the project and are 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."

22. Clause 7.1 of the flat buyer's agreement provides the time period of handing over possession and the same is reproduced below:

7.1 Schedule for possession of the unit- The promoter agrees and understands that timely delivery of possession of the Unit along with the car parking space (s), if any, to the Allottee and the Common Areas to the Association of Allottees or the Competent Authority, as the case may be, as provided under the Act and Rule 2(1)(F) of the Rules, 2017, is the essence of the Agreement.

It is further agreed between the Parties that the Allottee shall not raise any objection, or refuse to take possession of the Unit on any pretext whatsoever, if the possession of the same is being offered duly completed with all Specifications, Amenities, Facilities as mentioned in " Schedule E' hereto, any time prior to the Commitment Period.

The promoter assures to offer the handover of possession of the Unit along with the parking (if applicable) if any as per the agreed terms and conditions, unless there is a delay due to Force Majeure , court orders , Government Policy guidelines, policy guidelines of Competent Authorities, decisions affecting the regular development of the Project or any other event reason of delay recognized or allowed in this regard by the Authority, duly completed with all Specifications, Amenities, Facilities as mentioned in Schedule E hereto, prior to the expiry of the Commitment Period. If , the completion of the Project is delayed due any of to the above conditions , then the Allottee agrees that MIPL shall be entitled to the extension of time for delivery of possession of the Unit, provided the above conditions are not of the nature which makes it impossible for this Agreement to be performed.....

(m) "Commitment Period" shall mean June, 2022 notified by the promoter to the Authority, at the time of registration of the project under the Act, for completion of the Project, or as may be further revised/ approved by the authorities.

23. At the inception, it is relevant to comment on the pre-set possession clause of the buyer's agreement wherein the possession has been subjected to

numerous terms and conditions and force majeure circumstances. The drafting of this clause is not only vague but so heavily loaded in favour of the promoters that even a single default by the allottee in fulfilling obligations, formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date 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 allottee of his right accruing after delay in possession.

24. Due date of possession: It is observed by the Authority that the buyer agreement executed between the parties on 06.07.2018 and as per the clause 7.1 read with clause m of the buyer's agreement, the due date of possession comes out to be June 2022. Further as per HARERA notification no. 9/3-2-2- dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is June 2022. therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2-2- dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. As such the due date for handing over of possession comes out to be 31.12.2022. However, the Authority appreciates that a specific month for possession is mentioned in the buyer agreement and unit has been completed before the said due date by obtaining occupation certificate from the competent Authority.

25. Admissibility of delay possession charges at prescribed rate of interest:
The complainant is seeking delay possession charges at the prescribed rate of interest on the amount already paid by them. 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.

26. 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.
27. 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., 28.05.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
28. 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 allottee, as the case may be.

*Explanation. —For the purpose of this clause—
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 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;"*

29. 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.
30. On consideration of the documents available on record and submissions made by both the parties, 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 7.1 of the agreement, the builder agrees that the possession of the unit will be delivered before commitment period. As per clause m of the buyer agreement, "**Commitment Period**" shall mean **June, 2022** notified by the promoter to the Authority, at the time of registration of the project under the Act, for completion of the Project, or as may be further revised/ approved by the authorities. For the reasons quoted above, the due date of possession comes out to be June 2022. Further as per HARERA notification no. 9/3-2-2- dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is June 2022. therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2-2- dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. As such the due date for handing over of possession comes out to be 31.12.2022.

31. The respondent has obtained the occupation certificate on 30.09.2021. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to handing over the possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 06.07.2018 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 06.07.2018 to hand over the possession within the stipulated period.
32. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 30.09.2021. The respondent offered the possession of the unit in question to the complainants only on 25.10.2021. It is pertinent to mention here that the respondent-builder till date has not handed over the unit as it was to be given on preconditions. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 31.12.2022 till actual handing over the unit after completing/finishing in terms of the buyer agreement and the pre-handover amount paid to the complainant shall be adjusted in the delayed possession interest.
33. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainants are entitled to delay possession charges at rate of the prescribed interest @ 10.85% p.a. 31.12.2022 till actual handing over the unit; as per provisions of section 18(1) of the Act read with rule 15 of the Rules. The pre-handover amount i.e. Rs. 88,08,249/- paid to the complainant shall be adjusted in the delayed possession interest.

F.11 Direct the respondent to handover over of the possession of the flat to the complainant without requiring the Complainant to sign any

Indemnity Bond-Cum-Declaration-Cum-Undertaking, facilitation agreement and special power of attorney.

34. The complainant took a plea that the notice for offer of possession dated 25.10.2021 sought for signing of certain documents namely indemnity-bond-cum-declaration-cum-undertaking, facilitation agreement, special power of attorney containing terms contradictory to the rights of the complainant. The respondent is directed to handover the possession of the subject unit and not to place any condition or ask the complainants to sign an indemnity 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.**

H. Directions of the authority


35. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondent is directed to pay interest at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 31.12.2022 till actual handing over the unit after completing/finishing in terms of the buyer agreement.
 - ii. The arrears of such interest accrued from due date of possession till its admissibility as per direction (i) above shall be paid by the promoter to the allottees respectively within a period of 90 days from date of this order as per rule 16(2) of the rules.
 - iii. The rate of interest chargeable from the allottees by the promoters, in case of default shall be charged at the prescribed rate i.e., 10.75% by the respondent/promoters which is the same rate of

interest which the promoters would be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act

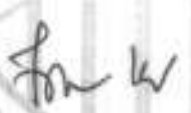
- iv. The pre-handover amount i.e. Rs. 88,08,249/- paid to the complainant shall be adjusted in the delayed possession interest.
- v. The respondent builder is directed to handover the possession of the subject unit after construct the wall within 60 days from the date of this order.

36. Complaint stands disposed of.

37. File be consigned to registry.


Ashok Sangwan
Member


Vijay Kumar Goyal
Member


Arun Kumar
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 28.05.2024

HARERA
GURUGRAM