



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

Complaint no. : 6933 of 2022
Complaint filed on : 07.11.2022
First date of hearing : 21.02.2023
Date of decision : 02.08.2024

1. Nisha Mittal
2. Ashish Chopra
(Through POA Manish Chopra)
Both RR/o: H. no. 310, Sector-14, Gurugram-122001

Complainants

Versus

M/s Emaar India Ltd.
(Earlier known as Emaar MGF Land Ltd.)
Address: Emaar MGF Business Park,
MG Road, Sikanderpur Chowk, Sector-28, Gurugram

Respondent

CORAM:

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Shri Kuldeep Kumar Kohli
Shri Harshit Batra

Advocate for the complainants
Advocate for the 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 allottee as per the agreement for sale executed inter se.

A. Project and unit 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	Emerald Floors Premier in emerald estates, Sector 65, Urban Estate, Gurugram.
2.	Total area of the project	25.49 acres
3.	DTPC license no. & validity status	06 of 2018 dated 17.01.2018
4.	RERA registered/not registered	104 of 2017 dated 24.08.2017
5.	Allotment letter	16.11.2009 (Page no. 50 of complaint)
6.	Date of buyer's agreement	20.02.2010 (Pg no. 55 of complaint)
7.	Unit no.	EFP-09-0201, 2 nd floor (page no. 59 of complaint)
8.	Unit area admeasuring	1650 sq. ft. (page no. 59 of complaint)
9.	Possession clause	<i>11. Company proposes to hand over the possession of the unit within 36 months from the date of execution of buyer's agreement. The allottee agrees and understand that the company shall be entitled to a grace period of three months, for applying and obtaining the completion certificate/ occupation certificate in respect of the unit.</i>



10.	Due date of possession	20.02.2013 (Calculated from the date of BBA execution) Note: Grace period is not allowed.
11.	Total sale consideration	Rs. 76,98,561/- (As per SOA Page no. 142 of reply)
12.	Amount paid by the complainants	RS 77,16,819/- (As per SOA page no 142 of reply)
13.	Occupation certificate	05.03.2019 (Page no 134 of reply)
14.	Offer of possession	17.01.2020 (Page no. 112 of complaint)
15.	Unit Handover Letter	25.05.2022 (Page no. 146 of reply)
16.	Conveyance deed	08.06.2022 (Page no. 149 of complaint)

B. Facts of the complaint

3. The complainants made following submissions in the complaint:
4. That the complainants booked unit no. EFP-09-0201 in the project of the respondent called "Emerald Floor Premier in Emerald Estates" and made a payment of Rs. 5,00,000/- dated 27.10.2009.
5. That the complainants was provided with an allotment letter confirming the booking of the apartment bearing unit no. EEP-09-0201 having super area 1650 sq. ft. at "Emerald Floor Premier in Emerald Estates" Sector 65, Urban Estate, Gurgaon with a basic price of



Rs. 61,85,850 exclusive of External Development Charges (EDC) and Infrastructure Development Charges (IDC).

6. That a buyer's agreement was executed between the original allottee and respondent on 20.02.2010 which includes the basic sale price of the unit of Rs. 61,85,850.00 along with the other charges.
7. That as per the clause 11(a) of the buyer's agreement, the respondent had to deliver the possession of the unit within 36 months from the date of execution of the buyer's agreement. The company is also entitled to a grace period of 3 months. Therefore, the due date of delivery comes out to be 20.02.2013 (20.05.2013) along with the grace period.
8. During this period, the second allottee tried to contact the office of respondent several times and requested them to allow them to visit the site but it was never allowed saying that they do not permit any buyer to visit the site during construction period and were not given any information about the status of construction and cause for delay.
9. After a long delay of more than 7 years, the second allottees were sent a letter for intimation of possession of the above said unit as the respondent had received the occupation certificate.
10. That as per the demands raised by the respondent, based on the payment plan, the complainants to buy the captioned unit paid a total sum of Rs. 77,28,842/- towards the said unit.
11. That after a long delay of 9 years, the respondent got the conveyance deed executed dated 08.06.2022. While this sale deed acknowledges that the complainants have paid the total consideration towards full and final consideration of the said apartment and applicable taxes etc., it makes no provision for compensating the complainants for the huge

delay in handing over the flat. The complainants were not given any opportunity to negotiate the terms of the said conveyance deed.

12. That the complainants contacted the respondent on several occasions and were regularly in touch with the respondent. The respondent was never able to give any satisfactory response to the complainants regarding the status of the delay compensation. The complainants kept pursuing the matter with the representatives of the respondent by visiting their office regularly as well as raising the matter to how the delay in the project will be compensated, but to no avail.
13. That, although the conveyance deed dated 08.06.2022 acknowledges that the complainants have paid the total consideration towards full and final consideration of the said apartment and applicable taxes etc., it makes no provision for compensating the complainants for the huge delay in handing over the flat. The complainants were not given any opportunity to negotiate the terms of the said conveyance deed.
14. That the respondent has played a fraud upon the complainants and have cheated them fraudulently and dishonestly with a false promise to complete the construction over the project site within stipulated period. The respondent had further malafidely failed to implement the builder buyer agreement. Hence, the complainants being aggrieved by the offending misconduct, fraudulent activities, deficiency and failure in service of the respondent is filing the present complaint.

C. Relief sought by the complainants

15. The complainants have filed the present complaint for seeking following relief:

- i. Direct the respondent to pay the interest on the total amount paid by the complainants at the prescribed rate of interest as per RERA from due date of possession till date of actual physical possession.
16. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act and to plead guilty or not to plead guilty.

D. Reply by the respondent

17. The respondent has raised certain preliminary objections and has contested the present complaint on the following grounds:
18. That the complainants are not Allottees but investors who have booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale.
19. That the complainants vide application form applied to the respondent for provisional allotment of the unit. The apartment no. EFP-09-0201, Tower 9 admeasuring 1650 sq. ft. was allotted vide allotment letter dated 16.11.2009. The complainants had opted for a construction linked payment plan. Thereafter, the buyer's agreement was executed between the complainants and the respondent on 20.02.2010.
20. That as per clause 11(a) of the Agreement, the due date of possession was subject to the allottees having complied with all the terms and conditions of the Agreement. That being a contractual relationship, reciprocal promises are bound to be maintained.
21. That the complainants had defaulted/delayed in making the due payments, upon which, reminders were also served to the complainants and had paid delayed payment interest at multiple occasions.

22. That the development and implementation of the said project have been hindered on account of several orders/directions passed by various authorities/forums/courts, before passing of the subjective due date of offer of possession.
23. The completion of the project delayed due to various force majeure conditions such as the directions of the Hon'ble Supreme Court of India, regarding mining activities of minor minerals, framing of modern mineral concession rules, the process the availability of building materials including sand which was an important raw material for development of the said project became scarce. Further, the respondent was faced with certain other force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc.
24. That the respondent applied for occupation certificate in respect of the said unit on 30.06.2017 and the same was thereafter issued vide memo bearing no. 5982 dated 05.03.2019. Once an application for grant of occupation certificate is submitted for approval in the office of the concerned statutory authority, respondent ceases to have any control over the same. The grant of sanction of the occupation certificate is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence.
25. That the complainants were offered possession of the unit in question through letter of offer of possession dated 17.01.2020. The



- complainants were called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit in question to the complainants. The complainants delayed the procedure of taking the possession of the said unit on their own account.
26. That moreover, without accepting the contents of the complaint in any manner whatsoever, and without prejudice to the rights of the respondent, the respondent has credited an amount of Rs. 16,813/- towards Anti-Profiting and an amount of Rs. 6,34,956/- as compensation to the complainants on account of the delay caused due to the default of the complainants in timely remittance of instalments and due to the reasons beyond the control of the respondent.
27. That the respondent earnestly requested the complainants to obtain possession of the unit in question and further requested the complainants to execute a conveyance deed in respect of the unit in question after completing all the formalities regarding delivery of possession. However, the complainants did not pay any heed to the legitimate, just and fair requests of the respondent and threatened the respondent with institution of unwarranted litigation.
28. That despite offering the possession of the unit, the complainants failed to take the possession of the said unit due to which the respondent was constrained to issue a Legal notice dated 23.03.2022 thereby requesting the complainants to take the possession of the said unit and to complete further necessary formalities and documentation in regard to the said unit.
29. That the complainants did not have adequate funds to remit the balance payments requisite for obtaining possession in terms of the buyer's



agreement and consequently in order to needlessly linger on the matter, the complainants refrained from obtaining possession of the unit in question. The complainants finally took the possession of the unit on 25.05.2022 and consequently, the conveyance deed was executed on 08.06.2022.

30. That in accordance with the facts and circumstances noted above, the present claim is barred by limitation. The Article 113 of Schedule I of the Limitation Act is applicable and the present complaint was filed after over 9 years of passing of limitation, which cannot be condoned under any circumstance whatsoever.
31. That moreover, after the execution of the conveyance deed, the contractual relationship between the parties stands fully satisfied and comes to an end. That there remains no claim/ grievance of the complainants with respect to the Agreement or any obligation of the parties thereunder.
32. 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.

E. Jurisdiction of the authority

33. 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

34. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana 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

35. Section 11(4)(a) of the Act 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.

36. 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 as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondent

F.I Objection raised by the respondent w.r.t complaint being barred by limitation.



37. The respondent has contended that the present complaint is not maintainable and barred by the law of limitation as the cause of action arose in January 2020, when the possession of the unit was offered to the complainants vide letter dated 17.01.2020 and any grievance w.r.t the same was to be raised within a reasonable period. After going through the documents available on record as well as submissions made by the parties, the Authority is of view that the law of limitation does not strictly apply to the Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is universally accepted maxim that "the law assists those who are vigilant, not those who sleep over their rights". Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority is of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.
38. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in MA NO.21 of 2022 of Suo Moto Writ Petition Civil No.3 of 2020 has held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
39. In the present matter the cause of action arose on 17.01.2020, when the possession of the unit was offered to the complainants by the respondent. The complainants have filed the present complaint on 07.11.2022 which is within a period of 3 years. Therefore, it is determined that the present complaint is within limitation.



F.II Objection regarding entitlement of DPC on ground of complainants being investors.

40. The respondent submitted that the complainants are investor and not consumer/allottee, thus, the complainants are not entitled to the protection of the Act and thus, the present complaint is not maintainable.
41. The authority observes that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims and objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that under section 31 of the Act, any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement, it is revealed that the complainants are an allottee/buyer and they have paid total price of Rs.1,18,69,510/- to the promoter towards purchase of the said unit in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

42. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between

respondent and complainants, it is crystal clear that the complainants are allottees as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 000600000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the complainants-allottees being investors are not entitled to protection of this Act stands rejected.

G. Findings on the reliefs sought by the complainants

G.I Direct the respondent to pay the interest on the total amount paid by the complainants at the prescribed rate of interest as per RERA from due date of possession till date of actual physical possession.

43. In the present complaint the complainants booked a unit bearing no. EFP-09-0201, 2nd floor admeasuring 1650 sq. ft. in the project of the respondent company namely "Emerald Floors Premier in Emerald estates" situated at Sector-65 Gurugram. The allotment letter for the said unit was issued on 16.11.2009. Thereafter, a buyer's agreement dated 20.02.2010 was executed between the parties regarding the said unit for a total sale consideration of Rs. 76,98,561/- and the complainants has fully paid a sum of Rs.77,16,819/-against the same.
44. The complainants have stated that as per clause 11(a) of the buyer's agreement the possession of the unit was to be handed over within 36 months from the date of execution of buyer's agreement. The buyer's

agreement was executed on 20.02.2010, therefore the due date comes out to be 20.02.2013. The occupation certificate of the project was received on 05.03.2019 and subsequently the unit was offered to the complainants on 17.01.2020. Hence, the respondent should pay the interest on the amount paid by them on account of delay in offering possession.

45. The respondent asserted the said plea of the complainants and stated that the said compliant is not maintainable as the occupation certificate was received on 05.03.2019 and the unit was offered on 17.01.2020 thereafter the unit was handed over to the complainants on 25.05.2022 and the conveyance deed was also got executed between the parties on 08.06.2022. After the execution of conveyance deed, the relationship between both the parties' stands concluded and no right or liabilities can be asserted by the respondent or the complainants against the other. Therefore, the complainants are estopped from claiming any interest in the facts and circumstances of the case.
46. The authority after considering documents held on record observes that it is important to look at the definition of the term 'deed' itself in order to understand the extent of the relationship between an allottee and promoter. A deed is a written document or an instrument that is sealed, signed and delivered by all the parties to the contract (buyer and seller). It is a contractual document that includes legally valid terms and is enforceable in a court of law. It is mandatory that a deed should be in writing and both the parties involved must sign the document. Thus, a conveyance deed is essentially one wherein the seller transfers all rights to legally own, keep and enjoy a particular asset, immovable or movable. In this case, the assets under consideration are immovable



property. On signing a conveyance deed, the original owner transfers all legal rights over the property in question to the buyer, against a valid consideration (usually monetary). Therefore, a 'conveyance deed' or 'sale deed' implies that the seller signs a document stating that all authority and ownership of the property in question has been transferred to the buyer.

47. From the above, it is clear that on execution of a sale/ conveyance deed, only the title and interest in the said immovable property (herein the allotted unit) is transferred. However, the conveyance deed does not conclude the relationship or marks an end to the statutory liabilities and obligations of the promoter towards the said unit whereby the right, title and interest has been transferred in the name of the allottee on execution of the conveyance deed.
48. The authority has already taken a view in in ***Cr no. 4031/2019 and others tiled as Varun Gupta V/s Emaar MGF Land Limited and others*** and observed that the execution of a conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the subject unit and upon taking possession, and/or executing conveyance deed, the complainant's never gave up his statutory right to seek delayed possession charges as per the provisions of the said Act.
49. After consideration of all the facts and circumstances, the authority holds that even after execution of the conveyance deed, the complainants allottee cannot be precluded from his right to seek delay possession charges from the respondent-promoter.
50. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the

proviso to section 18(1) of the Act. Proviso to section 18(1) 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."

51. Clause 11(a) of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

"11. POSSESSION

(a) Time of handing over the possession

Subject to terms of this clause and barring force majeure conditions, and subject to the Allottee having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company. The Company proposes to hand over the possession of the Unit within 36 (Thirty Six) months from the date of execution of buyer's agreement. The Allottee agrees and understands that the Company shall be entitled to a grace period of 3 (three) months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project."

52. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainants not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as

prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment time period for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their 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.

53. **Due date of possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 36 (thirty-six) months from the date of execution of buyer's agreement and further provided in agreement that promoter shall be entitled to a grace period of 3 months for applying and obtaining completion certificate/occupation certificate in respect of said unit. The date of execution of buyer's agreement is 20.02.2010 and the period of 36 months expired on 20.02.2013. As a matter of fact, the promoter has not applied to the concerned authority for obtaining completion certificate/ occupation certificate within the time limit (36 months) prescribed by the promoter in the buyer's agreement. The promoter has moved the application for issuance of occupation certificate only on 30.06.2017 when the period of 36 months has already expired. As per the settled law one cannot be allowed to take advantage of his own wrong. Accordingly, the benefit of grace period of 3 months cannot be allowed to the promoter due to aforesaid reasons.
54. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges.

Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, they 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.

55. The legislature in its wisdom in the subordinate legislation under 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.
56. 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., 02.08.2024 is 9%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11%.
57. **Rate of interest to be paid by the complainants in case of delay in making payments-** 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;”*

58. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11% by the respondent/ promoter which is the same as is being granted to the complainants in case of delayed possession charges.
59. On consideration of the documents available on record and submissions made by the parties regarding contravention as per 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 11(a) of the buyer's agreement executed between the parties on 20.02.2010, the possession of the subject flat was to be delivered within a period of 36 months from the date of execution of buyer's agreement plus 3 months grace period for applying and obtaining the completion certificate/ occupation certificate in respect of the unit and/or the project. The buyer's agreement was executed on 20.02.2010. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 20.02.2013. Occupation certificate was granted by the concerned authority on 05.03.2019 and thereafter, the possession of the subject flat was offered to the complainants on 17.01.2020. 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 offer physical possession of the subject flat and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 20.02.2010 to hand over the possession within the stipulated period.

60. 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 05.03.2019. The respondent offered the possession of the unit in question to the complainants only on 17.01.2020, so it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. These 2 months' of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 20.02.2013 till the expiry of 2 months from the date of offer of possession (17.01.2020) which comes out to be 17.03.2020.
61. 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 delayed possession at prescribed rate of interest i.e. 11 % p.a. w.e.f. 20.02.2013

till 17.03.2020 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

62. Also, the amount of Rs.6,34,956/- (as per statement of account dated 14.08.2023) so paid by the respondent to the complainants towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.

H. Directions of the authority

63. 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 the interest at the prescribed rate i.e. 11% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 20.02.2013 till 17.03.2020 i.e. expiry of 2 months from the date of offer of possession (17.01.2020).
- ii. Also, the amount of Rs.6,34,956/- so paid by the respondent towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.
- iii. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per rule 16(2) of the rules.
- iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11% by the respondent/promoter which is the same rate of interest

which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.


v. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.

64. Complaint stands disposed of.

65. File be consigned to registry.

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 02.08.2024


(Sanjeev Kumar Arora)
Member

HARERA
GURUGRAM