

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

Complaint no. : 366 of 2023
Date of filing: 02.02.2023
Date of decision: 13.12.2024

Anurag Kesarwani

R/o: - 301/18, 2nd Floor, Krishna Mansion, Civil Lines, Gurgaon **Complainant**

Versus

M/s RMG Developers Private Limited.

Regd. Office at: Sf-05, Ninex City Mart, Sohna Road, Gurugram

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Ms. Yamini (Advocate)

None

Complainant

Respondent

EX-Parte Order

1. This complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Project name and location	"RMG Residency", Sector 37C, Gurugram
2.	Project area	5 acres
3.	Nature of the project	Affordable Group Housing Colony
4.	DTCP license no. and validity status	12 of 2015 dated 09.10.2015 valid up to 08.10.2020
5.	Name of licensee	RMG Developers Pvt. Ltd.
6.	RERA Registered/ not registered	Registered vide no. 206 of 2017 dated 15.09.2017
7.	RERA registration valid up to	31.12.2019
8.	Date of approval of building plan	21.12.2015 [As per information obtained by the planning branch]
9.	Date of approval of environment clearance	31.01.2017 [As per information obtained by the planning branch]
10.	Unit no.	15, tower- 5, block- B, ground floor [Page no. 17 of the complaint]
11.	Unit measuring	401.609sq. ft. [Carpet area] 66.321 sq. ft. [Balcony area]
12.	Date of execution of apartment buyer agreement	07.07.2016 [Page 16 of complaint]
13.	Tripartite agreement	07.07.2016 (Page no. 42 of complaint)
14.	Possession clause	3.1 Possession

		<p><i>"Subject to force majeure circumstances, intervention of statutory authorities, receipt of occupation certificate and allottee(s) having timely complied with all its obligations, formalities or documentation, as per prescribed by the Developer and not being in default under any part hereof and apartments buyer's agreements, including but not limited to the timely payment of installments of the other charges as per the payment plan, stamp duty and registration charges, the developer proposes to offer of possession of the said apartment to the allottee(s) within 4 (four) years from the date of approval of building plans or grant of environment clearance whichever is later."</i></p> <p>(Page no. 20 of the complaint).</p>
15.	Due date of possession	31.07.2021 [Note: - Calculated from date of environment clearance i.e., 31.01.2017, which comes out to be 31.01.2021 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020.
16.	Total consideration	Rs.19,59,747/- [As per payment plan at page no. 34 of complaint]
17.	Total amount paid by the complainant	Rs.15,53,176/- [as alleged by complainant]
18.	Reminder for payment	12.12.2020, 16.02.2022 (Page 57-58 of complaint)
19.	Publication in newspaper	Annexed at page 59 but undated

20.	Occupation certificate /Completion certificate	Not received
21.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions: -

- i. That somewhere around 2015, the respondent no.1 i.e the company announced the launch of "Rmg Residency", an affordable group housing project located at Sector 37C, Gurugram, Haryana. The complainant while searching for a residential; space for himself came into touch with the agents and officers of the respondent no.1 company who told the complainant about the moonshine reputation of the company and made huge claims regarding the said project and also assured that the company is a part of ninex group and they have delivered several projects in the national capital region prior to this project.
- ii. That believing the false representations of the respondent no.1 and on the lookout for an adobe for himself and his family, in year 2016, the complainant booked a unit no. b-15, unit type ii, 1bhk on ground floor in tower -5, block- b admeasuring carpet area of 481.609 sq. ft. and balcony area of 66.321 sq. ft. in said project situated at sector-37C, Gurugram , Haryana.
- iii. That in furtherance of the abovementioned booking, the apartment buyer's agreement was executed between complainant and respondent no.1 on 07.07.2016. The total consideration for the unit in question as agreed between the parties was Rs. 19,59,747/- and in order to effectively purchase the unit, the complainant availed a facility of financial assistance from respondent no.2 i.e. Allahabad Bank who sanctioned fresh housing loan of Rs.17,50,000/- as confirmed vide letter dated 22.06.2016 for the purchase of unit no.15, tower 5, ground floor,

- block-b, in rmg residency , Sector-37C, Gurugaon, Haryana. Subsequently, the tripartite agreement was executed for the above said unit between the parties on 07.07.2016.
- iv. That the respondent no.2 disbursed the loan amount in accordance with the demands raised by the respondent no.1 and after performing due diligence with regard to construction status at the project site. By 2018, the complainant had already made a payment of Rs.15,53,176/-towards the unit in question in advance against a total sale consideration of Rs. 19,59,747/- excluding other allied charges, VAT, Taxes etc. It is pertinent to mention that the last amount of Rs. 5,21,860/- was disbursed by the respondent no-2 by end of 2018 as 4th Installment.
- v. That as per clause 3.1 of the said buyer's agreement dated 07.07.2016 the respondent proposed to handover the possession of the unit in question within 4 years from the date of approval of building plans or grant of environmental clearance i.e.02.12.2019 due date of possession. However, the respondent failed in handing over possession in accordance with the said agreement. The complainant approached the project location several times during the said period to see the stage of construction but the project was nowhere near completion. The complainant subsequently approached the respondent representatives to know about the date of handing over of possession but to the utter shock of the complainant, the respondent refrain from replying to the same. Various mails and letters were sent, but no reply came from the respondent's side.
- vi. That the dream of owning an apartment was shattered, when the complainant received a final/cancellation notice dated 12.12.2020 & 16.02.2022 and the same was published in newspaper. The amount demanded by the respondent no.1 was not disbursed by the respondent

no.2 towards the unit in question as the respondent no.1 failed to achieve construction milestone. The complainant has paid till 4th installment for the above said unit.

- vii. That the last installment was not disbursed by the respondent no.2 while keeping the construction progress in purview and in compliance with the due diligence norms of the Reserve Bank of India. The respondent no.1 threatened the complainant by various letter for clearing the dues or seeking cancellation of the unit in question irrespective of the fact that the complainant kept approaching the respondent no.1 highlighting the fact that disbursement was not made by Bank due to the tardy construction progress and said Bank has refused to disburse any amount until the construction progressed at the project site, but to no avail.
- viii. That the complainant approached the officials of respondent no.1 company in order to inquire about the status of the project so that he could pursue respondent no.2 to release the payment but to his utter shock, the respondent failed to construct the unit and the project in accordance with the schedule laid down in the agreement. The complainant kept requesting the respondent no.1 to construct the unit so that payment could be disbursed by Bank and to not cancel the unit and if needed, the complainant was also willing to speak to the senior officials of the respondent no.1 company but the latter did not pay any heed towards the persistent requests of the complainant and keep ignoring them.
- ix. That subsequently, the complainant kept making calls, requests and through several meetings kept inquiring as to when will the respondent deliver the project and to also not cancel his unit as the fault was entirely of respondent no.1 by not constructing the unit and the project as per

schedule but the respondent's representatives never furnished a concrete answer to the same.

- x. That till date, the respondent no.1 has failed to complete the project and obtain requisite government approvals and sanctions like OC/CC which itself validates the refusal on part of respondent no.2 in disbursing the payment. The above said act of the respondent no.1 clearly show that the respondent no.1 have been indulging in unfair trade practices and misrepresenting facts to the complainant.
- xi. That the present complaint has been filed in order to seek possession of the plot and interest on the delayed possession along with the other reliefs as mentioned in the relief clause of the complaint.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - i. Direct the respondent no. 1 to restore the unit in question and declare the cancellation null and void.
 - ii. Direct the respondent no. 1 to handover the possession of the unit after obtaining occupation certificate /completion certificate from the concerned Authority.
 - iii. Direct the respondent no. 1 to make the payment of delay possession charges at the prescribed rate of interest from the due date of possession i.e., 01.12.2019 till actual handing over of possession.
 - iv. Direct the respondent no.1 to charge delayed payment charges, if any at the prescribed rate of interest.
 - v. Direct the respondent no. 1 not to charge any holding charges.
 - vi. Direct the respondent no.1 to not to charge any delayed payment interest on account failure of disbursal by respondent no. 2.
5. The authority issued a notice dated 03.02.2023 of the complaint to the respondent by speed post and also on the given email address

at rmg@gmail.com. The delivery reports have been placed in the file. Despite service of notice, the respondent has preferred neither to put in appearance nor to file reply to the complaint within the stipulated period. Accordingly, the authority was left with no other option to proceed ex parte proceeding dated 02.08.2024 against the respondent.

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 those undisputed documents and submissions made by the complainant.

D. Jurisdiction of the authority

7. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.I Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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.

D.II Subject matter jurisdiction

9. 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.

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

E. Findings on the relief sought by the complainant.

E.I. Direct the respondent no. 1 to restore the unit in question and declare the cancellation null and void.

E.II. Direct the respondent no. 1 to handover the possession of the unit after obtaining occupation certificate /completion certificate from the concerned Authority.

E.III. Direct the respondent no. 1 to make the payment of delay possession charges at the prescribed rate of interest from the due date of possession i.e 01.12.2019 till actual handing over of possession.

E.IV. Direct the respondent no.1 to charge delayed payment charges, if any at the prescribed rate of interest.

11. The above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

12. Upon perusal of the documents available on record it has been found that allotment of subject unit was cancelled by the respondent due to non-payment. The foremost question which arises before the authority for the purpose of adjudication is that "whether the said cancellation is a valid or not?"

13. The Authority notes that the complainant has paid approx. 79.25% of the sale consideration, and the respondent was required to hand over the project by 31.01.2021 under the Affordable Housing Policy, 2013, excluding the HARERA notification no. 39/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020 grace period. Even with a six-month grace period in lieu of HARERA notification no. 39/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020 comes out to be 31.07.2021. More than three years later, the project remains incomplete and the respondent has not obtained the occupation certificate from the competent authority. The interest accrued during the delay period significantly reduces the amount payable by the complainant. Upon adjustment of this interest, the respondent would, in fact be liable to pay the complainant. Despite this, the respondent chose to cancel the unit on grounds of non-payment, while neglecting its own obligations. Such actions by the respondent displays bad faith, as it failed to adjust the delay period interest. In light of these findings, the cancellation of the complainant's unit is deemed invalid and is hereby set aside as issued in bad faith and the unit is restored.

14. 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

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."

15. As per clause 3.1 of the apartment buyer's agreement provides for handing over of possession and is reproduced below:

3. POSSESSION

3.1 "Subject to force majeure circumstances, intervention of statutory authorities, receipt of occupation certificate and allottee(s) having timely complied with all its obligations, formalities or documentation, as per prescribed by the Developer and not being in default under any part hereof and apartments buyer's agreements, including but not limited to the timely payment of installments of the other charges as per the payment plan, stamp duty and registration charges, the developer proposes to offer of possession of the said apartment to the allottee(s) within 4 (four) years from the date of approval of building plans or grant of environment clearance whichever is later".

16. Admissibility of delay possession charges at prescribed rate of interest: The complainant is seeking delay possession charges. 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.

17. 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.

18. 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., 13.12.2024 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.

19. 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;"

20. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% by the respondent /promoter which is the same as is being granted her in case of delayed possession charges.

21. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the Section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 3.1 of the buyer's agreement, the



possession of the subject apartment was to be delivered within 4 years from the date of commencement of project (*as per clause 1(iv) of Affordable Housing Policy, 2013, all such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of this policy*). In the present case, the date of approval of building plans is 21.12.2015, and the date of environment clearance is 31.01.2017. The due date of handing over of possession is reckoned from the date of environment clearance being later. Therefore, the due date of handing over of possession comes out to be 31.01.2021. Further as per **HARERA notification no. 9/3-2020 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 31.01.2021 i.e., after 25.03.2020. 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. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19. As such the due date for handing over of possession comes out to be 31.07.2021. Further, a relief of 6 months will be given to the allottee that no interest shall be charged from the complainant-allottee for delay if any between 6 months Covid period from 01.03.2020 to 01.09.2020.

22. It is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondent is established. As

such the complainant is entitled to delay possession charges at rate of the prescribed interest @ 11.10% p.a. w.e.f. 31.07.2021 till the valid offer of possession plus two months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier as per provisions of Section 18(1) of the Act read with Rule 15 of the Rules.

23. Further, as per Section 17(1) of the Act of 2016, the respondent is obligated to handover physical possession of the subject unit to the complainant. Therefore, the respondent shall handover the possession of the allotted unit as per specification of the buyer's agreement entered into between the parties, after receiving occupation certificate from the competent Authority.

E.V. Direct the respondent no. 1 not to charge any holding charges.

24. The developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed. Also, holding charges shall also not be charged by the promoter at any point of time even after being part of agreement as per law settled by the Hon'ble Supreme Court in civil appeal no. 3864-3889/2020 dated 14.12.2020.

E.VI. Direct the respondent no.1 to not to charge any delayed payment interest on account failure of disbursal by respondent no. 2.

25. As per the documents on record a tripartite agreement was executed between the parties on 07.07.2016 and the complainant also stated in its fact that the respondent no. 2 disbursed the loan amount. However, the issue arises because the complainant has not made the Bank (respondent no. 2) a part of the complaint, despite its involvement in the loan disbursement. Accordingly, to the present complaint's documentation (Performa-B), states only one respondent i.e., RMG Developers Pvt. Ltd., which implies that the bank has not been included

as a party in this case. Consequently, without the bank being a party to the complaint, no relief can be granted in regard to respondent no. 2, as per the records.

F. Directions of the authority

26. 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. Cancellation of the unit is set aside.
- ii. The respondent is directed to pay interest at the prescribed rate of 11.10% p.a. for every month of delay from the due date of possession i.e., 31.07.2021 till the valid offer of possession plus two months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier as per provisions of Section 18(1) of the Act read with Rule 15 of the Rules.
- iii. The arrears of such interest accrued from due date of possession of each case till the date of this order by the authority shall be paid by the promoter to the allottees within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to allottee(s) before 10th of the subsequent month as per rule 16(2) of the rules.
- iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- v. The respondent is directed to offer the possession of the allotted unit within 30 days after obtaining occupation certificate from the competent authority. The complainants w.r.t. obligation conferred upon them under section 19(10) of Act of 2016, shall take the physical

possession of the subject unit, within a period of two months of the occupancy certificate.

- vi. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- vii. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.

27. Complaint stands disposed of.

28. File be consigned to registry.

Dated: 13.12.2024



(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM