

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

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| Complaint no. | 6368 of 2022 |
| Date of filing: | 21.09.2022 |
| Date of order | 22.11.2024 |

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| 1. 2. | Sh. Naresh Chander Gupta Smt. Rekha Gupta R/O: - Block 1 T-408 Ashiana Nirmay Bhiwadi Rajasthan 301019 | Complainants |
| Versus | | |
| | M/S Landmark Apartments Pvt Ltd Regd. Office At: Landmark Group Landmark House 65 Sector 44 Gurugram Haryana 122002 | Respondent |
| CORAM: | | |
| | Shri Vijay Kumar Goyal | Member |
| APPEARANCE: | | |
| | Sh. Parmanand Yadav (Advocate) | Complainants |
| | Sh. Amarjeet Kumar (Advocate) | Respondent |

ORDER

1. The present complaint dated 21.09.2022 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

| S.No. | Heads | Information |
|-------|--|--|
| 1. | Name of the project | "The Residency", at Sector-103, Gurugram |
| 2. | Nature of project | Group Housing Colony |
| 3. | Project area | 10.868 acres |
| 4. | RERA registered/not registered | Not registered |
| 5. | DTPC License no. | 33 of 2011 dated 19.04.2011 valid upto 15.04.2026 |
| 6. | Name of licensee | Basic Developers Pvt. Ltd. and 2 others |
| 7. | Date of application | 05.05.2011 (page no. 36 of complaint) |
| 8. | Provisional allotment letter | 18.01.2013 (Page no. 30 of complaint) |
| 9. | Date of execution of Apartment buyer's agreement | 28.11.2013 (page no. 32 of complaint) |
| 10. | Unit no. | 146, 14 th floor, Block-B (page no. 36 of complaint) |
| 11. | Unit area admeasuring | 1710 sq. ft. (Page no. 36 of complaint) |
| 12. | Possession clause | 10.1 Schedule for Possession of the said Apartment The Developer/Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/said Apartment within a period of Four years (48 Months) from the date of execution of this Agreement unless there shall be |



| | | |
|-----|---------------------------------------|---|
| | | <p>delay or there shall be failure due to reasons mentioned in Clauses 11.1, 11.2, 11.3 and Clause 41 or due to failure of Intending Allottee(s) to pay in time the price of the said Apartment along with other charges and dues in accordance with the schedule of payments given in Annexure F or as per the demands raised by the Developer/Company from time to time or any failure on the part of the Intending Allottee(s) to abide by all or any of the terms or conditions of this Agreement. The Intending Allottee(s) agrees and undertakes that the company shall be entitled for a period of six months for the purpose of fit outs and a further period of six months on account of grace over and above the period more particularly specified here-in-above. (Emphasis Applied)</p> |
| 13. | Due date of possession | 28.11.2018 (calculated from the date of agreement plus grace period of 12 months allowed) |
| 14. | Total Sale Consideration | ₹82,46,300/- (as per BBA on page no. 41 of complaint) |
| 15. | Total amount paid by the complainants | ₹60,47,550/- + ₹2,68,725/- (service tax) (as per calculation sheet on page no. 76 of complaint) |
| 16. | Offer of possession | 11.12.2018 (page no. 47 of reply) |
| 17. | Occupation certificate | 25.09.2020 (page no. 49-B of the reply) |

B. Facts of the complaint:

3. The complainants have made the following submissions: -

- I. That the complainants applied for booking in a residential unit in the group housing colony having an area ad measuring 1710 Sq. Ft. approximately in the project of the respondent Landmark The Residency located at Sector 103 Gurugram, Haryana and paid a sum of amount Rs. 5,98,500/- as registration /booking amount.
- II. That a provisional allotment letter was issued by the respondent to the complainants on 18.01.2013 allotting unit no B-146, on the 14th floor admeasuring 1710 sq.ft. Though the booking payment was made on 30.04.2011 and provisional allotment letter was issued on 18.01.2013, the formal builder buyer agreement was issued and got signed only on 28.11.2013 for a total sale consideration of Rs. 82,46,300/-. During the above interim period a total sum of Rs 33,17,400/- was paid by the complainants as demanded by the respondent from time to time constituting about 50% of the base price and 50% of the Edc.
- III. That the buyer's agreement included maintenance and club membership charges and the complainants have opted for construction linked payment plan. According to clause 10.1 of the builder buyer agreement the time of handing over possession was 28.11.2017 that is 48 months from the execution of the builder buyer agreement. The respondent has promised to hand over possession of the unit Maximum by 28.11.2017.
- IV. That That the complainants has paid a total sum of Rs 63,16,275/- constituting about more than 75% of the total sale consideration but the respondent did not apprise about the timely progress of the project and the project is still incomplete. The respondent failed to hand over the physical possession of the unit as per the clause no 10.1 of the builder buyer

agreement despite the receipt of more than 75% of the total sale price from the complainants.

V. That the respondent issued letter of intimation for possession to the complainant without obtaining the necessary legal permissions like occupation certificate from the concerned departments and the apartment and building was far from completion and was not in a habitable condition. The respondent again issued the letter for payment of outstanding dues to the complainant at the exorbitant rate of 18% p.a. on the outstanding payments without even showing the necessary permissions from the concerned department and without sharing the progress of the project. The complainants objected to the earlier letter of possession and the present one and telephonically inquired from the executive to arrange the visit of the complainants to the project site but all the genuine and valid concerns of the complainants fell on deaf ears.

VI. That the complainants were finally allowed to visit the project site and during their visit to the project site, the unit was far from completion and even at that time the occupancy certificate for the tower was not shown to the complainants despite requesting for the same. The unit was found totally in habitable by the complainants and they protested for the same that despite receipt of huge amount from the complainants and having spent so much time since booking of the unit, the project is still incomplete. The complainants noticed the ongoing construction activities in the building premises and the unit was far away from human habitation.

VII. That the complainants wrote various emails dated 25.03.2022, 25.05.2022 and 21.06.2022 to the respondent apprising about the short coming in the unit and again requested to show the occupancy certificate but till date

occupancy certificate has not been shown to the complainants and the project is incomplete.

VIII. That the respondent even without responding to the just and genuine request of the complainants about the necessary permissions from the concerned department again raised demand letter dated 18.08.2022 demanding exorbitant amount of Rs 50,59,981 from the complainants making demands for various heads which are totally illegal and unjustified.

IX. That the respondent issued an Intimation for possession on 11.12.2018 without obtaining the necessary Occupancy Certificate, rendering the unit unfit for habitation. It is pertinent to note that the respondent company applied for the partial occupation certificate for Tower-A and the EWS Block of the said project, as referenced in memo no. ZP-721/AD(RA)/2020/16911 dated September 25, 2020 (Page No. 49B to 49D of the reply filed by the respondent. It is stated that no occupation certificate was applied for the block b of the project in which the apartment of the complainant is situated, and even until today the same is not in existence and therefore the contentions raised by the respondent company that it took more than 1 year for the concerned department to grant occupation certificate to the respondent project i.e. after processing the application for grant of occupation certificate filed by the respondent company on 23.04.2019 are not tenable as regards the case of the complainants.

X. That the respondent has also falsely and frivolously stated that the unit of the complainants is ready and complete in all respects and the respondent has also offered possession to the complainant due to lack of OC for Tower-B of the said project. In the month of March 2022, during a site visit, the complainants observed the unit and building premises were incomplete

and not habitable and there were even no lifts. Despite requests, the respondent company failed to provide a copy of the occupation certificate.

XI. That the respondent has failed to construct the club, along with its facilities, which were to be provided to the complainants at the time of possession. Despite the incomplete construction of the club, the respondent has charged the complainants, the club fees. Such charges were to be applicable only upon the club's full completion and readiness for use in a habitable condition.

XII. Written submissions have been filed by the complainants and the same is taken on record and perused further.

C. Relief sought by the complainants:

4. The complainant has sought following relief(s):
- I. Direct the respondent to pay delay penalty charges as prescribed under RERA w.e.f. 28.11.2017 upto date of actual delivery of possession.
 - II. Direct the respondent to deliver the possession of the unit complete in all respects.
 - III. Direct the respondent to provide copy of occupation certificate and completion certificate of the project.
 - IV. Direct the respondent not to levy maintenance charges or club charges or any other charges as the construction activity is still going on and the apartment is not in habitable condition and not to charge holding charges from the complainants.
 - V. Direct the respondent to bear the cost of GST as the apartment is in pre GST booking.
 - VI. Direct the respondent to justify the exorbitant increase in price of the flat.

5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D.Reply by the respondent :

6. The respondent has contested the complaint on the following grounds:

- I. That the complainants applied for the allotment of an apartment having an approximate super area admeasuring (1710 sq. feet) developed by M/s Landmark Apartments Private Limited in "Landmark the Residency", Sector 103, Gurugram. The buyers agreement was executed between the parties on 28.11.2013 with the basic sale price of Rs. 62,85,000/-, PLC of Rs. 6, 84,000/- and other charges of Rs. 12,77,300/- and the total price of the apartment coming out to be Rs. 82,46,30,00/-.
- II. That a demand notice was issued to the complainants but no payment was forthcoming from them against various pending dues and charges. The respondent vide letter dated 03.11.2017 issued a reminder letter to the complainants on account of non-payment of dues against the demand/s raised by the respondent by way of several letters and reminders. However, even thereafter the complainants defaulted in the payment of the dues with a promise to make the subsequent payments on time. That it is pertinent to mention here that the complainants have failed to make any payment post 2014.
- III. That thereafter vide letter dated 11.12.2018 an intimation regarding the possession of the units was issued to the complainants. Through the said intimation, the respondent requested the complainant to clear its pending dues and contact the office of the respondent for the final formalities of the handover process. However, the complainants did not come forward to make any further payment or contact the office of the

respondent for taking possession of the allotted unit. Thereafter reminder 04.09.2019 was also sent to the complainants for clearance of the outstanding dues in order to enable the respondent to expedite the handover process of the unit but they failed to adhere to the said request for clearance of dues and taking over of possession.

IV. That the respondent has applied for the grant of the occupation certificate on 23.04.2019. However, the Director Town and Country Planning Department, Haryana granted the occupation certificate to the respondent vide its letter dated 25.09.2020. Hence, the delay in this case cannot be attributed to the respondent as it took more than 1 year for the concerned department to grant occupation certificate to the respondent project i.e. after processing the application for grant of occupation certificate filed by the respondent on 23.04.2019.

V. That the respondent sent various demands & reminders dated 30.09.2020, 12.11.2020 and 31.03.2021 for clearance of outstanding dues and requested the complainants to come forward for taking handover of the possession of the allotted unit. However, the complainants failed to clear the outstanding dues and take possession of their unit.

VI. That the respondent even thereafter issues demand/ final reminder to the complainants to make the payment vide letter dated 18.02.2022 and also vide letter dated 16.05.2022, however in vain. The complainants instead of taking the possession and making the payment of remaining dues, filed a case for possession of the unit apparently with an intention to enrich himself in an unjust manner. The unit of the complainants is ready and fit for occupation subject to the complainants make the payments as per the statement of account.

- VII. That in accordance with clause 10.1 of the buyer's agreement the possession of the unit was agreed to be handed over within a period of 48 months in addition to a grace period of one year. An intimation of possession was sent to the complainants in the year 2018 but they had been non responsive and has not come forward for the settlement of dues and conclusion of the sale.
- VIII. That the burden of delay caused in the grant of the occupation certificate cannot be placed on the respondent. Despite force majeure conditions the respondent has completed the construction of the project within the agreed time limit. The respondent herein would also like to bring to the notice of this Hon'ble Authority that the year 2020 has been a year marked by the spread of coronavirus in the entire world and a nationwide lockdown was imposed in the country. The situation has been unprecedented and we have still not been able to release ourselves from the clutches of this pandemic. It is most likely on account of this reason that the grant of the occupation certificate was delayed to such an extent be whatever the reason, the respondent in no case can be held responsible/accountable for the delay that has taken place in the grant of the occupation certificate by the relevant/competent authorities in the instant case. The buyers agreement was executed between the parties on 28.11.2013. The construction of the project was effected on account of unforeseen circumstances beyond the control of the respondent. In the year, 2012 on the directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) was regulated. The Hon'ble Supreme Court directed framing of modern mineral concession rules. The competent authorities took substantial time in framing the rules and in 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. The National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide Order dated 2.11.2015 mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna River bed. These orders in fact inter-alia continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High Court and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was almost 2 years that the scarcity as detailed aforesaid continued, despite which all efforts were made and materials were procured at 3-4 times the rate and the construction continued without shifting any extra burden to the customer. The time taken by the respondent to develop the project is the usual time taken to develop a project of such a large scale.

IX. That despite the intimation of possession having been offered in 2018 and the occupation certificate has been granted on 25.09.2020, the complainants has not come forward to take the possession. It is submitted that the complainants by way of present complaint is

claiming possession and other reliefs despite the fact that the complainants has already been offered possession of the unit.

- X. That the buyer's agreement delineates the respective obligations of the complainants as well as the respondent in case of breach of any of the conditions specified therein, the consequences thereof.
- XI. That the project of the respondent has three towers namely Tower A, B and C as shown in the approved site plan. The respondent is developing the instant project in phases and initially only Tower A consisting 14 floors has been constructed and for the same occupational certificate has also been received.
- XII. That the respondent has not yet planned the construction of the remaining part of the project namely Tower B and C which are still at the planning stage and shall be constructed later on.
- XIII. That for the aforesaid Tower A for the convenience purpose has been further subdivided into Block A and B and the same would be clear from the approved site plan in which the two blocks have been separately mentioned i.e Block A as "A" and Block B as "B". Thus it makes clear that Tower A is further sub divided into Block A and B which are not interconnected and sharing a common wall and two separate blocks. The fact remains same that the occupational certificate of Tower A comprising 14th floor of Block A and Block B stands received.
- XIV. Written submissions have been filed by the complainants and the same is taken on record and perused further.
- XV. All other averments made in the complaint were denied in toto.

7. Copies of all the relevant documents have been filed and placed on the

record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

8. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial Jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

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

Section 11

(4) 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:

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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.

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

F. Findings on objections raised by the respondent

F.I Objections regarding the circumstances being 'force majeure'.

12. The respondent /promoter has raised the contention that the construction of the project has been delayed due to force majeure circumstances such as delay on part of Govt. Authorities in granting approvals, ban on the use of water for construction purposes, restriction on mining due to orders passed by the Hon'ble Supreme Court, non-availability of raw material due to various orders of Hon'ble Punjab and Haryana High Court and National Green Tribunal, Covid -19 etc. However, all the pleas advanced in this regard are devoid of merit. First of all, the possession of the unit in question was to be offered by 28.11.2018 .Moreover, time taken in governmental clearances cannot be attributed as reason for delay in project as the promoter is to factor in all such procedural delays and ground realities while fixing the timelines for delivery of the project in the agreement executed with the buyers. Therefore, the respondent cannot take benefit of its own wrong and the objection of the respondent that the project was delayed due to circumstances being force majeure stands rejected.

G. Findings on the relief sought by the complainants:

G.I Direct the respondent to pay delay penalty charges as prescribed under RERA w.e.f. 28.11.2017 upto date of actual delivery of possession.

G.II Direct the respondent to deliver the possession of the unit complete in all respects.

13. The above-mentioned reliefs sought by the complainants are taken together being interconnected.

14. In the present complaint, the complainants 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. Clause 10.1 of the flat buyer agreement provides for handing over of possession and is reproduced below.

15 Schedule for Possession of the said Apartment

The Developer/Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/said Apartment within a period of Four years (48 Months) from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in Clauses 11.1, 11.2, 11.3 and Clause 41 or due to failure of Intending Allottee(s) to pay in time the price of the said Apartment along with other charges and dues in accordance with the schedule of payments given in Annexure F or as per the demands raised by the Developer/Company from time to time or any failure on the part of the Intending Allottee(s) to abide by all or any of the terms or conditions of this Agreement. The Intending Allottee(s) agrees and undertakes that the company shall be entitled for a period of six months for the purpose of fit outs and a further period of six months on account of grace over and above the period more particularly specified here-in-above.

16. Due date of handing over possession and admissibility of grace period:

As per clause 10.1 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 48 months plus



12 months of grace period, in case the construction is not complete within the time frame specified. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the occupation certificate by November 2017. Accordingly, in the present case the grace period of 12 months is allowed. Therefore, the due date of possession comes out to be 28.11.2018.

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

18. 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.

19. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 22.11.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

20. 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 allottees, as the case may be.

Explanation. —For the purpose of this clause—

(i) 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;

(ii) the interest payable by the promoter to the allottees 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 allottees to the promoter shall be from the date the allottees defaults in payment to the promoter till the date it is paid;

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

22. Now the question for consideration arises as to for how much period, the allottees are entitled for delay possession charges.

Validity of offer of possession

23. It is necessary to clarify this concept because after valid and lawful offer of possession, the liability of promoter for delayed offer of possession comes to an end. On the other hand, if the possession is not valid and lawful, the liability of promoter continues till valid offer is made and allottee remains entitled to receive interest for the delay caused in handing over valid possession. The authority is of considered view that a valid offer of possession must have following components:

- i. Possession must be offered after obtaining occupation certificate;
- ii. The subject unit should be in a habitable condition;

iii. The possession should not be accompanied by unreasonable additional demands.

24. It is observed that in the present case in hand the respondent offered the possession of the subject unit on 11.12.2018 without obtaining occupation certificate as the same was obtained from the competent Authority on 25.09.2020. Hence, at the outset the said offer of possession failed to fulfil the first and foremost criteria of the valid offer of possession. Hence, the same cannot be regarded as a valid offer of possession.

25. As per the documents available on record the occupation certificate was obtained on 25.09.2020. Additionally, the offer of possession was made to the complainants on 12.11.2020 and the same is available at page 51 of reply. Therefore the offer of possession dated 12.11.2020 is hereby deemed valid, as it was made subsequent to the obtaining of the occupation certificate.

26. 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 10 of the agreement, the possession of the subject apartment was to be delivered within 48 months from the date of execution of agreement. For the reasons quoted above, the due date of possession is to be calculated from the date of execution of buyer's agreement i.e., 28.11.2013. Therefore, the due date of possession is calculated from the date of execution of buyer's agreement and the said time period of 48 months expired on 28.11.2017. As far as grace period of 12 months is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 28.11.2018.

27. The respondent has obtained the occupation certificate on 25.09.2020. 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 allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 28.11.2013 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 28.11.2013 to hand over the possession within the stipulated period.

28. 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 25.09.2020. The respondent offered the possession of the unit in question to the complainants only on 12.11.2020. 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. This 2-month of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically he has 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., 28.11.2018 till the date of offer of possession (12.11.2020) plus two months i.e., 12.01.2021 or till actual handover of possession whichever is earlier.

29. 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 @ 11.10% p.a. w.e.f. i.e., 28.11.2018 till 12.01.2021 i.e., expiry of 2 months from the date of offer of possession

(12.11.2020) or till actual handover of possession whichever is earlier; as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

30. The respondent is also directed to handover the possession of the allotted unit complete in all aspects as per specifications of buyer's agreement within 60 days from date of this order i.e 22.11.2024.

G.III Direct the respondent to provide copy of occupation certificate and completion certificate of the project.

31. In the present complaint the occupation certificate has been obtained by the respondent on 25.09.2020 and the same is annexed at page 49-B of reply. It is the duty of the respondent to obtain the occupation certificate or completion certificate and make it available to the allottees as per Section 11(4)(b) of the Act of 2016 . The same is reproduced as under for ready reference:

11. Functions and duties of promoter:-

(4) The promoter shall - सत्यमेव जयते

(b) be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be.

G.IV Direct the respondent not to levy maintenance charges or club charges or any other charges as the construction activity is still going on and the apartment is not in habitable condition and not to charge holding charges from the complainants.

32. Maintenance Charges - The Act mandates under section 11 (4) (d) that the developer will be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees. Clause 14.1, 14.4 of the buyer agreement provides the clause for maintenance charges.

33. However, the respondent shall not demand the advance maintenance charges for more than one (1) year from the allottee even in those cases

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wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than one (1) year.

34. **Club Membership Charges** - Perusal of case file itself reveals that club membership charges amounting to Rs.2,00,000/- were payable by the complainants. This understanding was explicitly agreed upon between the parties as specified in clause 1.5 of the apartment buyer agreement.

35. However, the Authority in *Complaint Case no. 4031 of 2019 titled as "Varun Gupta vs Emaar MGF Land Limited" decided on 12.08.2021*, had already decided that if the club has come into existence and the same is operational or is likely to become operational soon, i.e., within reasonable period of around 6 months, the demand raised by the respondent for the said amenity shall be discharged by the complainants as per the terms and conditions stipulated in the builder-buyer's agreement. However, if the club building is yet to be constructed, the respondent should prepare a plan for completion of the club and demand money regarding club charges and its membership from the allottees only after completion of the club.

36. **Holding Charges** - 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.

G.V Direct the respondent to bear the cost of GST as the apartment is in pre GST booking.

37. It is important to note that the possession of the subject unit was required to be delivered by 28.11.2018 and the incidence of GST came into operation thereafter on 01.07.2017. The authority is of view that the due date of possession is after 01.07.2017 i.e. date of coming into force of GST, the builder is entitled for charging GST w.e.f. 01.07.2017. The promoter shall charge GST

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from the allottees where the same was leviable, at the applicable rate, if they have not opted for composition scheme subject to furnishing of such proof of payments and relevant details.

G.VI Direct the respondent to justify the exorbitant increase in price of the flat.

38. The complainants in their relief sought, requested the respondent to justify the increase in the price of the unit. However, no supporting documentation has been provided in this regard. Therefore, no directions to this effect is given. The respondent is directed to charge strictly in terms of builder buyer agreement and no amount shall be demanded which is not part of the said agreement.

H.Directions of the Authority:


39. 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 to the complainants against the paid-up amount at the prescribed rate i.e., 11.10% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 28.11.2018 till 12.01.2021 i.e., expiry of 2 months from the date of offer of possession (12.11.2020) or till actual handover of possession whichever is earlier as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act.
- ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and after clearing all the outstanding dues, if any, the respondent shall handover the possession of the allotted unit.

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- iii. The respondent is directed to handover the possession of the allotted unit complete in all aspects as per specifications of buyer's agreement within 60 days from date of this order i.e 22.11.2024.
- iv. 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 allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- v. The arrears of such interest accrued from due date of possession till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order.
- vi. The respondent shall not charge anything from the complainants which is not the part of the agreement to sell.
- vii. The respondent is not entitled to claim holding charges from the complainant(s)/allottee(s) at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3889/2020 decided on 14.12.2020.
40. Complaint stands disposed of.
41. File be consigned to registry.

Dated: 22.11.2024


Vijay Kumar Goyal
Member
Haryana Real Estate
Regulatory Authority,
Gurugram