

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

Complaint no. : 2965 of 2019
First date of hearing : 05.11.2019
Date of decision : 03.03.2021

M/s Navneet Developers
Through its partners Mr. Kulbir Singh Chandok
and Mrs. Rominder Chandok
Regd. Office: D-9, Model Town, Delhi-110009.
Also at: C-9/9, DLF City, Phase 1,
Gurugram-122002.

Complainant

Versus

M/s Emaar MGF Land Ltd.
Office address: 306-308, 3rd floor, C-2,
Square One, District Centre, Saket,
New Delhi-110017.
Also at: Emaar MGF Business Park,
M.G. Road, Sikanderpur Chowk,
Sector 28, Gurugram-122002.

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

Chairman
Member

APPEARANCE:

Shri Tushar Bahmani
Shri J.K. Dang along with Shri
Ishaan Dang

Advocate for the complainant
Advocates for the respondent

ORDER

1. The present complaint dated 18.07.2019 has been filed by the complainant/allottee in Form CRA 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 them.

A. Project and unit related details

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

S.No.	Heads	Information
1.	Project name and location	Capital Tower 1, Sector-26, Gurugram.
2.	Total licensed area	6.27 acres
3.	Nature of the project	Commercial Colony
4.	DTCP license no. and validity status	i. 19 of 2012 dated 03.03.2012 (for 3.83 acres) Valid till 02.03.2020 ii. 18 of 2012 dated 03.03.2012 (for 2.44 acres) Valid till 02.03.2020
5.	Name of licensee	Sh. Virender Kumar C/o Emaar MGF Land Ltd.
6.	HRERA registered/ not registered	Registered vide no. 331 of 2017 dated 24.10.2017 (for 6.27 acres)

	HRERA registration valid up to	31.07.2019
	Extension of registration certificate	06 of 2019 dated 16.10.2019
	Extension of registration valid up to	31.07.2020
7.	Occupation certificate received on	11.09.2019 [Page 131 of reply]
8.	Provisional allotment letter dated	04.09.2013 [Page 38 of reply]
9.	Unit no.	CT1-GF-018, ground floor Note: As per letter of offer of possession dated 31.12.2019, the unit was shifted from CT1-GF-009 (3873 sq. ft.) to CT1-GF-018 (3881.52 sq. ft.), page 133 of reply.
10.	Unit measuring (super area) as per buyer's agreement	3873 sq. ft.
11.	The area of the unit stands revised vide letter for offer of possession dated 31.12.2019, page 133 of reply	Increased to 3881.52 sq. ft.
12.	Date of execution of buyer's agreement	21.01.2014 [Page 69 of complaint]
13.	Payment plan	Construction linked payment plan [Page 95 of complaint]
14.	Total consideration as per statement of account dated 13.01.2020, page 123 of reply	Rs.14,73,04,553/-

15.	Total amount paid by the complainant as per statement of account dated 13.01.2020, page 123 of reply	Rs.11,99,23,618/-
16.	The date of start of construction as per statement of account dated 13.01.2020, page 123 of reply	15.12.2013
17.	Due date of delivery of possession as per clause 17(a) of the said agreement i.e. 36 months from the date of start of construction i.e. 15.12.2013 [Page 82 of complaint]	15.12.2016
18.	Offer of possession to the complainant	31.12.2019 [Page 133 of reply]
19.	Delay in handing over possession till date of offer of possession i.e. 31.12.2019	3 year 16 days

B. Facts of the complaint

3. The complainant submitted that through provisional allotment letter, the respondent allotted unit no. CT1-GF-009 measuring 3873 sq. ft. in the project named 'Capital Towers-1' by paying booking amount of Rs.50,00,000/-. The buyer's agreement was executed between the parties on 21.01.2014. As per clause 17(a)(I) of the buyer's agreement, the possession of the booked unit was to be handed over to the complainant company within 36 months from the start of construction. Clause 17(b)(II) further provided 120 days of grace period for

applying and obtaining necessary approvals in respect of the project. Hence, the actual due date of possession of the unit in dispute was 15.04.2017. Clause 19(a) of the buyer's agreement provides that if the respondent fails to handover the possession as per the possession clause, then the respondent shall be liable to pay the complainant company compensation @ Rs.50/- per sq. ft. of the super area of the said unit per month for the period of such delay. The total cost of the property as per statement of account as on 02.07.2019 is Rs. 14,61,65,324/- (all inclusive) and the complainant company had already paid 95% of the total sale price i.e.11,99,23,618/- to the respondent. The partner of the complainant company visited the site of the project on 07.03.2014, he was in utter shock to see that the construction work had been stopped for over a month and there were no construction workers at the site.

4. That the complainant company purchased the unit in dispute by paying preferred location charges (PLC) to the respondent and the unit was open from two sides at the corner of the building was allotted. But it was discovered that a ramp to the basement adjacent to the unit was constructed which is clear violation of the terms of the buyer's agreement. (Recent pictures are annexed as Annexure C/18 which shows the said violation.). Thus, the respondent has violated the terms and conditions of the buyer's agreement dated 21.01.2014 and failed to handover the possession of the said unit as agreed in

the agreement. The completion of the project is hugely delayed for which respondent is wholly and solely responsible despite taking 95% of the total sale price from the complainant.

C. Relief sought by the complainant

5. The complainant has filed the present complaint for seeking the following reliefs:
 - (a) Direct the respondent to handover the actual physical possession of the unit in dispute to the complainant company.
 - (b) Direct the respondent to pay interest at prescribed rate on account of delay in handing over of the possession of the said unit on the entire amount deposited by the complainant i.e. Rs.11,99,23,618/- till date.
 - (c) Direct the respondent to remove the construction of the ramp adjacent to the said unit which was allotted after PLC was paid to the respondent or refund PLC.
6. 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

7. The respondent has raised certain preliminary objections and has contested the complaint on the following grounds:

- i. The respondent submitted that the complainant has filed the present complaint seeking possession, compensation and interest for alleged delay in delivering possession of the unit in question. It is submitted that such complaints are to be decided by adjudicating officer under section 71 of the Act read with rule 29 of the rules and not by this hon'ble authority.
- ii. That the present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 21.01.2014. The respondent carves leave of this hon'ble authority to refer to and rely upon the terms and conditions set out in the buyer's agreement in detail at the time of the hearing of the present complaint.
- iii. That the unit bearing no. CT1-GF-009 was provisionally allotted in favour of the complainant vide provisional allotment letter dated 04.09.2013 and thereafter buyer's agreement was executed on 21.01.2014 between the complainant and the respondent. The complainant had opted for an instalment payment plan in terms of which the first instalment was time bound and the remaining instalments were payable upon achievement of construction milestone indicated in the payment plan. The complainant had agreed and undertaken to make payment as per the payment plan, upon demands raised

by the respondent. However, the complainant was extremely irregular in making payment and delayed the payment on several occasions. The respondent was constrained to issue payment request letters, reminders and notices for payment. As the complainant has defaulted in making timely payment as per payment plan, the time period of handing over possession stands extended under clause 17(b)(v) of the agreement.

- iv. That as per clause 19 of the buyer's agreement, compensation for any delay in delivery of possession shall only be given to such allottees who are not in default of their obligations envisaged under the agreement and have not defaulted in payment of instalments as per payment plan incorporated under the buyer's agreement. Since, the complainant has defaulted in remittance of instalments pertaining to the unit in question, the complainant is not entitled to any compensation or interest in the facts and circumstances of the case.
- v. That the project was registered under the provisions of the Act and the certificate of registration issued by this authority on 24.10.2017 and the project has been registered till 31.07.2019. furthermore, the respondent had applied for extension of the period of registration of the project. Extension of the registration period was granted on 16.10.2019 and the same was extended till 31.07.2020.

- vi. The respondent submitted that within the period of registration, the respondent has completed the construction of the project and had applied for occupation certificate on 05.04.2019 and the same was granted by the competent authorities on 11.09.2019. Accordingly, the possession of the subject unit had been offered on 31.12.2019. Therefore, there has been no delay in handing over the possession of the said unit as alleged by the complainant.
- vii. That the several allottees, including the complainant, have defaulted in timely remittance of payment of instalments which is an essential, crucial and an indispensable requirement for conceptualisation and development of the project in question. Furthermore, when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially whereas enormous business losses befall upon the respondent. The respondent, despite default of several allottees, has diligently and earnestly pursued the development of the project in question and has constructed the project in question as expeditiously as possible.
- viii. The respondent denied that the PLC were paid by the complainant only because the unit in question was open on two sides. PLC has been charged because the unit is

situated on the ground floor and is facing MG Road. This has been clearly specified in allotment letter dated 04.09.2013 as well as payment plan. As per clause 6 and 7 of the buyer's agreement, the complainant has accepted that the plans of the project are tentative and the same are subject to change at the discretion of the respondent or as directed by the competent authority and the same might result in changes to the location, preferential location, number, boundary of the area of the unit. It is submitted that the unit allotted to the complainant continues to be preferentially located in as much as the same is located on the ground floor and is facing MG Road. Consequently, PLC is applicable on the unit and there is no violation of the buyer's agreement.

- ix. That the project has got delayed due to the following reasons which were beyond the control of the respondent: pursuant to the approval of the board of Directors of Emaar MGF Land Ltd. (EMLL) at its meeting held on 11.05.2016, EMLL has filed a scheme of Demerger before the hon'ble High Court of Delhi on 16.05.2016. The matter was later transferred to National Company Tribunal, New Delhi (BCLT). The said demerger scheme proposed transfer of demerged undertaking from EMLL to MGF Developments Limited (MGF or resulting company). Such demerged undertaking included the Capital Tower project as well i.e. the said project was

proposed to be transferred by EMLL to MGF under the scheme. In the end of 2016, the landowner of Capital tower project raised objection on the said transfer of project from EMLL to MGF and also filed formal object before the NCLT in March 2017 against the demerger scheme. Therefore, both EMLL and MGF agreed to exclude the said Capital Tower project from the scheme and basis the same, the landowner withdrew his objection from NCLT in September 2017. In view of the said withdrawal of objection by landowner, the said project came back to EMLL in September 2017. Thereafter, demerger scheme was approved by NCLT vide its order dated 08.01.2018 and 16.07.2018.

x. That there were many issues with the said project from filing of scheme in May 2016 till September 2017, including the matter being pending in NCLT and also dispute/objections with the landowner. Due to the same, the construction and development of the project got delayed during this period. Once the said disputes were over in September 2017, the construction work was expedient with full force thereafter from October 2017.

xi. Hence, the complaint is liable to be dismissed.

8. The respondent has filed written arguments on 28.10.2020. The respondent submitted that the complainant and the respondent are bound by terms and conditions of the buyer's

agreement and the respondent put reliance in this regard upon various citations: **2000(1) Apex Court Journal 388, AIR 1996 SC 2508, AIR 1990 SC 699**. The respondent submitted that this hon'ble authority does not have jurisdiction and authority to legally direct levying of interest and in this regard, the respondent has put reliance on order dated **02.05.2019 passed by Justice Darshan Singh (Retd.) Chairman, Haryana Real estate Appellate Tribunal, Chandigarh.**

9. The respondent further submitted that the liability to pay interest imposed on the developer is in the nature of compensation. It has further been held that any determination of dispute pertaining to payment of interest under sections 12, 14, 18 and 19 is to be adjudicated by the adjudicating officer as per section 71 of the Act. While supporting this contention, the respondent has place reliance on **Neelkamal Realtors Suburban Pvt. Ltd. and anr. Versus Union of India and ors. [2018(1) RCR (Civil) 298]**.
10. 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.

11. The authority, on the basis of information and explanation and other submissions made and the documents filed by both the parties, is of considered view that there is no need of further hearing in the complaint.

E. Findings of the authority

12. The preliminary objection raised by the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in *Simmi Sikka v/s M/s EMAAR MGF Land Ltd. (complaint no. 7 of 2018)* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage. The said decision of the authority has been upheld by the hon'ble Haryana Real Estate Appellate Tribunal in its judgement dated 03.11.2020, in appeal nos. 52 & 64 of 2018 titled as *Emaar MGF Land Ltd. V. Simmi Sikka and anr.*

E.I Delay possession charges

13. 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."

14. Clause 17(a) of the buyer's agreement provides for handing over of possession and is reproduced below:

"17. POSSESSION

(a) Time of handing over the possession

- I. *The Company shall endeavor to handover possession of the Unit to the Allottee within 36 (thirty-six) months from the date of start of construction, subject, however, to the Force Majeure conditions as stated in clause 34 of this agreement and further subject to the Allottee having strictly complied with all the terms and conditions of this Agreement and not being in default under any provisions of this Agreement and all amounts due and payable by the Allottee under this Agreement having paid in time to the Company. The Company shall give notice to the Allottee, offering in writing, to the Allottee to take possession of the Unit for his occupation and use ("**Notice of Possession**").*
- II. *The Allottee agrees and understands that the Company shall be entitled to a grace period of 120 days over and above the period more particularly specified here-in-above in clause 17(a)(i), for applying and obtaining necessary approvals in respect of the Complex."*

15. 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 complainant not being in default under any provisions of this agreements 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 terms and conditions of the buyer's agreement may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. 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.

16. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the subject unit within 36 months from the date of execution of the buyer's agreement and further provided in agreement that promoter shall be entitled to a grace period of 120 days for applying and obtaining necessary approvals in respect of the complex. The buyer's agreement has been executed on 21.01.2014. As per

statement of account dated 13.01.2020, the respondent has raised demand on account of "start of excavation" on 15.12.2013. Both the parties have agreed to it. Accordingly, the date of start of construction is taken as 15.12.2013. The period of 36 months expires on 15.12.2016. As a matter of fact, there is no material on record that during this period, the promoter had applied to any authority for obtaining the necessary approvals with respect to the said project. As admitted by the respondent, the respondent had applied for occupation certificate on 05.04.2019 and the same was granted by the competent authorities on 11.09.2019. As per the settled law one cannot be allowed to take advantage of his own wrong. Accordingly, this grace period of 120 days cannot be allowed to the promoter at this stage. The same view has been upheld by the hon'ble Haryana Real Estate Appellate Tribunal in appeal nos. 52 & 64 of 2018 case titled as ***Emaar MGF Land Ltd. VS Simmi Sikka*** case and observed as under: -

68. As per the above provisions in the Buyer's Agreement, the possession of Retail Spaces was proposed to be handed over to the allottees within 30 months of the execution of the agreement. Clause 16(a)(ii) of the agreement further provides that there was a grace period of 120 days over and above the aforesaid period for applying and obtaining the necessary approvals in regard to the commercial projects. The Buyer's Agreement has been executed on 09.05.2014. The period of 30 months expired on 09.11.2016. But there is no material on record that during this period, the promoter had applied to any authority for obtaining the necessary approvals with respect to this project. The promoter had moved the application for issuance of occupancy certificate only on 22.05.2017 when the period of 30 months had already expired. So, the promoter cannot claim the benefit of grace period of 120 days. Consequently, the learned Authority has rightly determined the due date of possession.

17. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the prevailing 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 is 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 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. The hon'ble Haryana Real Estate Appellate Tribunal in **Emaar MGF Land Ltd. vs. Simmi Sikka (Supra)** observed as under: -

"64. Taking the case from another angle, the allottee was only entitled to the delayed possession charges/interest only at the rate of Rs.15/- per sq. ft. per month as per clause 18 of the

Buyer's Agreement for the period of such delay; whereas, the promoter was entitled to interest @ 24% per annum compounded at the time of every succeeding instalment for the delayed payments. The functions of the Authority/Tribunal are to safeguard the interest of the aggrieved person, may be the allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of his dominate position and to exploit the needs of the home buyers. This Tribunal is duty bound to take into consideration the legislative intent i.e., to protect the interest of the consumers/allottees in the real estate sector. The clauses of the Buyer's Agreement entered into between the parties are one-sided, unfair and unreasonable with respect to the grant of interest for delayed possession. There are various other clauses in the Buyer's Agreement which give sweeping powers to the promoter to cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the Buyer's Agreement dated 09.05.2014 are ex-facie one-sided, unfair and unreasonable, and the same shall constitute the unfair trade practice on the part of the promoter. These types of discriminatory terms and conditions of the Buyer's Agreement will not be final and binding."

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., 03.03.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
20. The definition of term 'interest' as defined under section 2(z) 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:

*"(z) "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;"*

Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

E.II Preferential location charges (PLC)

21. The complainant has raised the question about the justification of preferential location charges raised by the promoter. The complainant submitted that the PLC was paid for the unit which was open from two sides at the corner of building, but the respondent has constructed ramp to the basement thus ceasing the unit to be preferentially located. On the other hand, the respondent contended that the unit allotted to the complainant continues to be preferentially located in as much as the same is located on the ground floor

and is facing MG Road. Consequently, PLC is applicable on the unit and there is no violation of the buyer's agreement.

22. As far as issue regarding PLC is concerned, the matter is to be dealt as per the provisions of the buyer's agreement dated 21.01.2014, where the said agreement have been entered into before coming into force the Real Estate (Regulation and Development) Act, 2016. Therefore, it is relevant at this stage for the authority to refer to the relevant clause of the allotment letter and the buyer's agreement. It is pertinent here to quote relevant portion of the allotment letter which is reproduced below:

"Please note that as per Terms of sale, Preferential Location Charges (PLC) is applicable for Ground Floor M.G. Road facing. Therefore, you are being charges for Preferential Location Charges (PLC) of Rs.1,74,28,500/-..." (Emphasis supplied)

23. Also, as per clause 1.2(d)(i) the following provisions have been made regarding PLC:

"2.2(d) Preferential Location Charges

- I. Preferential location charges ("PLC") shall be charged for certain units in the Complex which are preferentially located and if the Allottee opts for any such Unit, the PLC for the same shall be included in the Total Consideration payable by the Allottee as set out in clause 2.2(a)(i) above for the said unit..."***

24. Furthermore, as per **annexure II (Schedule of Payment)** of the buyer's agreement, the respondent has charged PLC of Rs. 1,74,28,500/- on ground of "ground floor M.G road facing".

Thus, on the basis of allotment letter and the buyer's agreement, the authority observed that the allotment letter as well as buyer's agreement clearly provides that the allottee had agreed to pay preferential location charges for preferentially located unit which is located on ground floor and is facing M.G Road. Also, there is no evidence on record to show that the PLC was charged for two-sided open unit. Therefore, in view of the submissions made by the parties and documents on record, the authority is of the view that the amount levied towards preferential location charges is justified.

25. 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 provisions of the Act. By virtue of clause 17(a) of the buyer's agreement executed between the parties on 21.01.2014, possession of the booked unit was to be delivered within a period of 36 months from the date of start of construction. The construction started on 15.12.2013. 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 15.12.2016. The promoter offered the possession of the subject unit to the complainant on 31.12.2019. Accordingly, it is the failure of the promoter to

fulfil its obligations and responsibilities as per the buyer's agreement dated 21.01.2014 to hand over the possession within the stipulated period.

26. 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. The complainant-allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 15.12.2016 till the handing over of the possession i.e. 29.02.2020 (offer of possession 31.12.2019 plus 2 months), at prescribed rate i.e., 9.30 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules. 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 11.09.2019. However, the respondent offered the possession of the unit on 31.12.2019, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, he should be given 2 months' time from the date of offer of possession. This 2 months' of reasonable time is being given to the complainant 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. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 15.12.2016 till the expiry of 2 months from the date of offer of possession (31.12.2019) which comes out to be 29.02.2020.

27. At the same time, the complainant-allottee has also failed to make the entire payment which is in violation of section 19(6) and (7) of the Act. Therefore, the complainant is also liable to pay interest at the prescribed rate on the delayed payment. The complainant-allottee requested for fresh statement of account of the unit based on the above determinations of the authority.

F. Directions of the authority

28. Hence, the authority hereby passes the following order and issue 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. 9.30% per annum for every month of delay on the amount paid by the complainant from due

date of possession i.e. 15.12.2016 till the handing over of possession i.e. 29.02.2020 (offer of possession 31.12.2019 plus 2 months).

- ii. The promoter may credit delay possession charges in the statement of account/customer accounts ledger of the unit of the allottee, if the amount outstanding against the allottee is more than the DPC this will be treated as sufficient compliance of this order.
- iii. If there is no amount outstanding against the allottee or less amount outstanding against the allottee then the balance delay possession charges shall be paid after adjustment of the outstanding against the allottee.
- iv. The arrears of such interest accrued from 15.12.2016 till 29.02.2020 shall be paid by the promoter to the allottee within a period of 90 days from date of this order as per rule 16(2) of the rules.
- v. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- vi. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement.
- vii. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the

prescribed rate i.e., 9.30% by the respondents/promoters which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delay possession charges as per section 2(za) of the Act.

viii. The respondent-promoter is directed to furnish to the complainant-allottee statement of account within one month of issue of this order. If there is any objection by the complainant-allottee on statement of account, the same be filed with respondent-promoter after fifteen days thereafter. In case the grievance of the complainant-allottee relating to statement of account is not settled by the respondent-promoter within 15 days thereafter then the complainant-allottee may approach the authority by filing separate application.

29. Complaint stands disposed of.

30. File be consigned to registry.

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.03.2021

(Dr. K.K. Khandelwal)

Chairman

Judgement uploaded on 08.06.2021.