

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

Complaint no. : 3219 of 2019
First date of hearing : 05.11.2019
Date of decision : 03.03.2021

Vikram Aggarwal

Address: M-98, Greater Kailash-II,
New Delhi-110048.

Complainant

Versus

M/s Emaar MGF Land Ltd.

Office address: 306-308, 3rd floor, C-2,
Square One, District Centre, Saket,
New Delhi-110017.

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

Chairman
Member

APPEARANCE:

Shri Vikas Dutta and Shri Shiva Sambyal
Advocates for the complainant
Shri J.K Dang along with Shri Ishaan Dang
Advocates for the respondent

ORDER

1. The present complaint dated 27.08.2019 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 02.03.2025
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 108 of reply]
8.	Unit no.	CT1-08-015, 8 th floor [Page 78 of complaint]
9.	Unit measuring (super area)	2230 sq. ft.
10.	The unit was renumbered, and the area of the unit stands revised vide letter for offer of possession dated 31.12.2019, page 110 of reply	CT-08-011 Area of the unit was decreased to 2159.15 sq. ft.
11.	Date of execution of buyer's agreement	03.12.2014 [Page 75 of complaint]
12.	Payment plan	Construction linked payment plan [Page 101 of complaint]
13.	Total consideration as per statement of account dated 03.09.2019, page 102 of reply	Rs.4,89,21,430/-
14.	Total amount paid by the complainant as per statement of account dated 03.09.2019, page 103 of reply	Rs.3,77,78,412/-
15.	Due date of delivery of possession as per clause 17(a) of the said agreement i.e. 36 months from the date of execution of agreement i.e. 03.12.2014. [Page 88 of complaint]	03.12.2017
16.	Offer of possession to the complainant	31.12.2019 [Page 110 of reply]

17.	Delay in handing over possession till date of offer of possession i.e. 31.12.2019	2 years 28 days
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B. Facts of the complaint

3. The complainant submitted that the provisional allotment of unit bearing no. CT1-08-015 in the said project was made to the complainant vide letter dated 25.09.2014 issued by the respondent. Thereafter, the buyer's agreement for the subject unit was executed between the parties on 03.12.2014 for total sale consideration of Rs.4,75,87,787/-. Clause 2.2(b) as well as in clause 16 of the buyer's agreement provides that if allottee fails and/or delays the payment of any instalments as per annexure-II of the buyer's agreement then the respondent company shall have the right to terminate the agreement and forfeit the earnest money along with non-refundable amounts. However, if the company decides to waive its right to terminate, it shall be entitled to charge delay payment charges of 24% p.a. at every succeeding instalment from the due date of instalment to the date of payment. That clause 17(a)(i) of the buyer's agreement further provides that company shall endeavour to handover possession of the said unit to the allottee within 36 months from the date of execution of buyer's agreement. The buyer's agreement in order to provide extra cushion to the company also provides that company shall be entitled to grace period of 120 days over and above the period more particularly specified in clause 17(a)(i) for applying and

obtaining necessary approvals in respect of the complex. Thus, as per clause 17(a)(i) of the buyer's agreement, the possession of the said unit was to be handed over by the respondent to the complainant by 03.12.2017.

4. The complainant submitted that he has made timely payment of instalments as per the payment schedule as and when payment requests linked with construction status were made by the respondent no.1 company. In July 2017, complainant discovered that no construction activity is going on in the said project for past many months and there is no sight of completion. The respondent has hopelessly failed to complete the project within time agreed in the buyer's agreement and is now seeking to enforce the terms of the buyer's agreement against the complainant as per the convenience of the respondent. This right of the respondent has itself ceased when the respondent failed to deliver the project within the time agreed or stipulated in the buyer's agreement without any default of the complainant. The respondent further issued letter dated 31.12.2019 to the complainant offering conditional possession on paper forcing complainant to make further payment without addressing the above stated grievances of the complainant of adjusting the payment with the claim of complainant for interest and compensation for undue delay in handover of possession of the said commercial unit allotted to the complainant. The respondent has raised unjustified demands of payment in letter dated 31.12.2017

which is not as per the understanding in the buyer's agreement.

C. Relief sought by the complainant

5. The complainant has sought following reliefs:

- (a) Direct the respondent to expedite the completion of the said commercial complex and handover the possession of the subject unit to the complainant which is long overdue.
- (b) Award interest to the complainant on the amount paid by the complainant for the period of delay in handing over the possession at the same rate i.e. 24% p.a. which was payable by the complainant to the respondent company for delay in payment of instalments.
- (c) Direct the respondent company to adjust the instalment which fell due on 19.07.2019 against the interest prayed herein above.
- (d) Direct the respondent not to penalise the complainant with delayed payment charges as complainant was forced to stop further payment due to substantial delay in the completion of the project and no response to complainant's communication dated 18.07.2019.
- (e) Direct the respondent to withdraw demand of payment of 24 months maintenance charges in advance.

- (f) Direct the respondent to withdraw and adjust its unjustified demands raised by respondent including demand raised vide letter dated 31.12.2019.
 - (g) Conduct inquiry and adjudicate entitlement of compensation to the complainant.
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 to plead guilty or not to plead guilty.

D. Reply by the respondent

7. The respondent has contested the complaint on the following grounds:
- i. The respondent submitted that the complainant has filed the present complaint seeking 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 unit in question was provisionally allotted in favour of the complainant vide provisional allotment letter dated 25.09.2014 and thereafter buyer's agreement was executed on 03.12.2014 between the parties. 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 demand 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. Admittedly, the complainant has consciously refrained from remitting any amount after paying instalment for casting of top floor roof slab in July 2018.

- iii. That clause 17 of the buyer's agreement provides that for delivery of possession of the unit within 36 months plus grace period of 120 days, from the date of execution of the buyer's agreement dated 03.12.2014 subject to timely payment of instalments and compliance by the complainant of all the terms and conditions of the said agreement. Furthermore, in case of delay by the complainant in making payment, the time for possession stands extended at the discretion of the developer. Moreover, delay caused due to reasons beyond the control of the respondent, including but not limited to the time taken by statutory authorities in granting approvals, permission etc. also has to be excluded from the aforesaid timeframe. There has been delay by the complainant in

making payment of instalments as per payment plan opted by him and consequently the time period of handing over possession stood extended under clause 17(b)(v) of the buyer's agreement.

iv. 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.

v. 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.

- vi. 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.

- vii. 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.
- viii. The respondent submitted 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. Since, the complainant has intentionally 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.
- ix. Hence, the present complaint deserves to be dismissed at very threshold.
8. The complainant has filed written arguments on 30.10.2019 wherein the complainant has asserted and averted the facts already stated in the complaint and has denied the contentions raised by the respondent in its reply.
9. The respondent has filed written arguments on 02.11.2020. 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**.

10. 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]**.
11. 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.

12. 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

13. 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

14. The reliefs sought by the complainant in para 5. (a) to (d) are being taken together as the findings recorded in one relief will definitely affect the result on the other reliefs and these reliefs are interconnected. 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. 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 Execution of Agreement, 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 having been 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."*

16. 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.

- 17. 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 03.12.2014. The period of 36 months expires on 03.12.2017. 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.

18. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the rate of 24% p.a. however, proviso to section 18 provides that where an allottee does not intend to withdraw

from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 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.

19. 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."

20. 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%.
21. 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;"

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 Advance maintenance charges

22. With respect to the relief sought by the complainant regarding advance maintenance charges, the relevant clause of the buyer's agreement is as follows:

"24. MAINTENANCE

(a) ...

(b) *The Allottee further agrees and undertakes to pay the indicative and approximate Maintenance Charges as may be levied by the Maintenance Agency for the upkeep and maintenance of the Complex, its common areas, utilities, equipment installed in the Complex and such other facilities forming part of the Scheduled Land. Such charges payable by the Allottee will be subject to escalation of such costs and expenses as may be levied by the Maintenance Agency. The Company reserves the right to change, modify, amend, and impose additional conditions in the Maintenance Agreement at the time of its final execution."*

23. Thus, the authority is of the view that the respondent is entitled to collect advance maintenance charges as per the buyer's agreement executed between the parties. However, the period for which advance maintenance charges (AMC) is

levied should not be arbitrary and unjustified. It is interesting to note that in clause 24 of the buyer's agreement, the respondent has failed to mention time period for which it shall be charging AMC. The authority has gone through a large number of buyer's agreement of different project of the same builder and observed that generally, AMC is charged by the builder/developer for a period of 6 months to 2 years. The authority is of the view that the said period is required by the developer for making relevant logistics and facilities for the upkeep and maintenance of the project. Since the developer has already received the OC/part OC and it is only a matter of time that the completion of the project shall be achieved; its ample time for a RWA to be formed for taking up the maintenance of the project and accordingly the AMC is handed over to the RWA. Keeping in view the facts above, the authority deems fit that the respondent is right in demanding advance maintenance charges at the rate prescribed therein at the time of offer of possession. However, the respondent shall not demand the advance maintenance charges for more than one year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than one year.

E.III Demands raised by the respondent vide letter of offer of possession dated 31.12.2019

24. The complainant is seeking relief w.r.t withdrawal and adjustment of unjustified demands raised by the respondent

vide letter of offer of possession dated 31.12.2019. However, the complainant has failed to give details and any substantial proof as to what demands are unjustified and illegal. The authority holds that the respondent shall not charge anything from the complainant which is not the part of the agreement. Furthermore, holding charges shall not be charged by the promoter at any point of time even after being part of agreement as per law settled by hon'ble Supreme Court in civil appeal nos. 3864-3899/2020.

E.IV For seeking compensation

25. The complainant/allottee has the right to seek compensation for which he may make separate application under section 31 and 71 of the Act read with rule 29 of the rules in 'Form CAO' before the adjudication officer as the facts for adjudging the quantum of compensation are different i.e. as per provisions of section 72 of the Act.
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 17(a) of the buyer's agreement executed between the parties on 03.12.2014, possession of the booked unit was to be delivered within a period of 36 months from the date of execution of agreement. 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 03.12.2017. The promoter offered the possession of the subject unit to the complainant on 31.12.2019. Accordingly, it is the failure of the promoter-respondent to fulfil its obligations and responsibilities as per the buyer's agreement dated 03.12.2014 to hand over the possession within the stipulated period.

27. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the complainant-allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 03.12.2017 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. 03.12.2017 till the expiry of 2 months from the date of offer of possession (31.12.2019) which comes out to be 29.02.2020.

28. 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

29. 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. 03.12.2017 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 03.12.2017 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 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 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 delay 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 agreement.

However, holding charges shall not be charged by the promoter at any point of time even after being part of agreement as per law settled by hon'ble Supreme Court in civil appeal no. 3864-3899/2020.

viii. The respondent shall not demand the advance maintenance charges for more than one year from the complainant.

ix. 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.

30. Complaint stands disposed of.

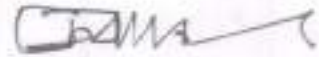
31. File be consigned to registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.03.2021


(Dr. K.K. Khandelwal)

Chairman