

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

Complaint no. : 6574 of 2019
First date of hearing : 05.11.2019
Date of decision : 03.03.2021

United Air products Pvt. Ltd.
Office address: F-1, Geetanjali Enclave,
New Delhi-110017.

Complainant

Versus

M/s Emaar MGF Land Ltd.
Office address: 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 Saumyen Das
Shri J.K. Dang along with
Shri Ishaan Dang

Advocate for the complainant
Advocates for the respondent

ORDER

1. The present complaint dated 17.12.2019 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 110 of reply] |
| 8. | Allotment letter dated | 25.09.2014 [Page 18 of complaint] |
| 9. | Unit no. | CT1-08-010, 8 th floor Note: As per letter dated 01.06.2019, the unit was shifted from CT1-08-011 (6276 sq. ft.) on 8 th floor to CT1-08-010 (6429.26), page 71 of complaint. Also, possession letter is in respect of the same unit. |
| 10. | Unit measuring (super area) as per letter dated 01.06.2019 | 6429.26 sq. ft. |
| 11. | The area of the unit stands revised vide letter for offer of possession dated 31.12.2019, page 112 of reply | Increased to 6471.79 sq. ft. |
| 12. | Date of execution of buyer's agreement | 19.11.2014 [Page 20 of complaint] |
| 13. | Payment plan | Instalment payment plan [Page 46 of complaint] |
| 14. | Total consideration as per statement of account dated 17.09.2019, page 103 of reply | Rs.13,76,82,012/- |
| 15. | Total amount paid by the complainant as per statement of account dated 17.09.2019, page 104 of reply | Rs.10,63,21,663/- |
| 16. | Due date of delivery of possession as per clause 17(a) of the said agreement i.e. 36 | 19.11.2017 |

| | | |
|-----|---|-----------------------------------|
| | months from the date of execution of agreement. [Page 33 of complaint] | |
| 17. | Offer of possession to the complainant | 31.12.2019 [Page 112 of reply] |
| 18. | Delay in handing over possession till date of offer of possession i.e. 31.12.2019 | 2 year 1 months 12 days |

B. Facts of the complaint

3. The complainant submitted that the complainant booked a commercial space bearing no. CT1-08-010 (old unit no. CT1-08-011) having an aggregate area of 6429.26 sq. ft. (old area was 6276 sq. ft.) and was allotted vide allotment letter dated 25.09.2014. Thereafter, a buyer's agreement was executed between the respondent and the complainant on 19.11.2014 with respect to the said unit for total sale consideration of Rs.12,90,12,594/- plus services tax/GST, stamp duty and registration charges. Till date a sum of Rs.10,63,21,663/- has been paid by the complainant. As per clause 17 of the buyer's agreement, the respondent was to issue a notice of possession within 36 months from the date of execution of said buyer's agreement i.e. by 18.11.2017. The possession of the said unit has not been offered by the respondent to the complainant till date and there has been delay in handing over the possession.
4. That at the request of the respondent, the unit no. CT1-08-011 having an area of 6276 sq. ft., originally allotted to the complainant was changed to CT1-08-010 having an aggregate

area of 6429.26 sq. ft. without any change in the building or location or floor. The said change was duly recorded in the letter dated 01.06.2019. When the complainant enquired from the customer care of the respondent to visit the unit but was shocked to learn that the said was registered in the name of "Vanbros Construction India Ltd." in the books of the respondent. Thereafter, respondent issued 10th and 11th instalment demand letters and the said letters still referred the old unit no. CT1-08-011 despite the fact that new unit no. CT1-08-010 was allotted to the complainant vide letter dated 01.06.2019. After vigorous follow up by the complainant, the respondent vide email dated 06.08.2019 confirmed that the said unit was indeed registered in the books of the respondent in the name of the complainant. That the delay in payment of instalment no. 10th and 11th was only due to reasons attributable to the respondent, hence no interest is payable by the complainant to the respondent. Vide email dated 2.07.209, the respondent had approached the complainant, acting as a broker, that there is prospective tenant who is willing to take area in the said project including the area of the unit at a monthly rent of Rs.115/- per sq. ft. per month with 15% acceleration after every three years.

5. That the respondent has failed to handover possession of the said unit in time and in fact the respondent has even failed to issue possession notice to the complainant till date despite the fact the complainant had made timely payment of

Rs.10,63,21,663/- to the respondent against total sale consideration of Rs.12,90,12,594/- strictly as per demand raised by the respondent from time to time.

6. As per application dated 17.01.2020 filed by the complainant for issuing direction to the respondent, the complainant has brought additional facts before the authority. The complainant submitted that the respondent vide said offer of possession letter dated 31.12.2019 informed the complainant to make payment of the final dues of Rs.5,47,13,405/- on or before 01.02.2020 failing which it shall attract delay payment charges @ 10% p.a. and holding charges along with the respondent's right to invoke the provisions of the buyer's agreement. That the respondent had demanded the said amount without adjustment of interest for delayed period despite the fact that the complainant is entitled for delayed possession charges w.e.f. 19.03.2018 to 16.01.2020/ till the actual date of possession at the prescribed rate of interest i.e. @ 10.20% p.a. of Rs.1,93,55,157/- (presently calculated up till 16.01.2020) as provided in rule 15 of the rules as the respondent has failed to deliver possession of the said unit by 19.03.2018 as per clause 17 of the buyer's agreement.
7. That in the said letter of possession, the respondent has levied delayed payment charges of Rs.11,54,432/- on instalment no. 10 and 11 amounting to Rs.1,32,85,469/- and Rs.1,02,80,088/- respectively. In this regard, it is submitted that the demand drafts for the said instalments were duly got made by the

complainant (photocopy of the demand drafts is also annexed with the complaint at page 82), which fact was also intimated to the respondent, but were not handed over to the respondent as the respondent had failed to adjust the delayed possession charges from its demand.

8. That in the said letter of possession, the respondent has also levied an amount of Rs.43,44,215/- towards payment of HVAT liability despite the fact that the complainant is not liable to pay the said amount and in fact the payment HVAT liability is sole responsibility of the respondent/promoter/developer. Further the respondent has demanded an amount of Rs.29,32,497/- towards advance monthly maintenance charges for 24 months, though the complainant is ready to pay the advance maintenance charges on monthly basis.
9. That the complainant is ready and willing to take possession of the said unit, however, the respondent inter alia be directed to raise a fresh revised demand in respect to the said unit after adjustment of the delayed possession charges of Rs.1,93,55,157/- and provide an undertaking to pay the compensation amount to the complainant as and when determined by the adjudicating officer so that the complainant can make necessary payments to the respondent and complete the documentation requirement for taking over possession of the said unit by 01.02.2020.

C. Relief sought by the complainant

10. The complainant has preferred the present complaint inter alia for the following reliefs (as per application dated 17.01.2020 filed by the complainant for issuing direction to the respondent):

- (a) Direct the respondent to raise a fresh demand against the said unit no. CT-08-010 having an aggregate area of 6471.79 sq. ft. in the said project after adjustment of the said delayed possession charges of Rs.1,93,55,157/- w.e.f. 19.03.2018 to 16.01.2020 @ 10.20% per annum (delayed possession charges are being calculated till 16.01.2020, if the possession is delayed beyond from 01.02.2020, additional delayed possession charges to be payable by the respondent) immediately so that the complainant can make necessary payments to the respondent and take possession of the said unit after completion of necessary documentation.
- (b) Direct the respondent not to levy any delay payment charges @10% p.a. or any other rate on the 10th and 11th instalments.
- (c) Direct the respondent not to levy any delay payment charges on any amount @ 10% p.a. or any other rate on the final due amount payable by the complainant to the respondent till expiry of seven days from the date of fresh demand issued by the respondent against the said unit after adjustment of the said delayed possession charges.

- (d) Direct the respondent not to levy holding charges.
 - (e) Direct the respondent to withdraw the demand of Rs.29,32,497/- towards advance monthly maintenance charges on monthly basis.
 - (f) Direct the respondent that it shall furnish an undertaking with the complainant to the effect that the respondent shall pay the amount of compensation to the complainant as and when directed by the adjudicating officer to the respondent.
 - (g) Direct the respondent that it shall not charge anything from the complainant which is not part of the buyer's agreement dated 19.11.2014.
11. 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

12. The respondent has contested the complaint on the following grounds:
- i. The respondent submitted that the unit bearing no. CT1-08-011 was provisionally allotted in favour of complainant vide letter 25.09.2014. The buyer's agreement dated 19.11.2014 was executed between the complainant and the respondent. That the complainant

had consciously 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 and 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 instalment no.9. There has been delay by the complainant in making payment of instalments as per payment plan opted by it and consequently the time for handing over possession stood extended under clause 17(b)(v) of the agreement.

- ii. 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.

- iii. 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.
- iv. 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 and have not defaulted in payment of instalments as per payment plan incorporated under the buyer's 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.
- 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. The respondent submitted 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. Hence, the present complaint deserves to be dismissed at very threshold.

13. The complainant has filed rejoinder dated 02.03.2020 and written arguments on 01.10.2020 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.
14. 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.
15. 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

16. 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

17. The reliefs sought by the complainant in para 10. (a) to (c) 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."

18. 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."*

19. 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.

20. **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 19.11.2014. The period of 36 months expires on 19.11.2017. 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.

21. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the rate of 10% 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.

22. 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."

23. 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%.

24. 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 delay possession

charges. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

E.II Holding charges

25. With respect to relief regarding holding charges, hon'ble NCDRC in its order dated 03.01.2020 in case titled as **Capital Greens Flat Buyer Association and Ors. V. DLF Universal Ltd., Consumer case no. 351 of 2015** held as under:

"36. It transpired during the course of arguments that the OP has demanded holding charges and maintenance charges from the allottees. As far as maintenance charges are concerned, the same should be paid by the allottee from the date the possession is offered to him unless he was prevented from taking possession solely on account of the OP insisting upon execution of the Indemnity-cum-Undertaking in the format prescribed by it for the purpose. If maintenance charges for a particular period have been waived by the developer, the allottee shall also be entitled to such a waiver. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed."

26. The said judgment of NCDRC was also upheld by the Hon'ble Supreme Court vide its judgement dated 14.12.2020 passed in the Civil appeal nos. 3864-3889 of 2020 against the order of NCDRC (supra). Therefore, the respondent-promoter shall not levy holding charges.

E.III Advance maintenance charges

27. 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."*

28. 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 as per above quoted 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.IV For seeking compensation

29. 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.
30. On consideration of the documents placed 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 19.11.2014, 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 19.11.2017. The promoter offered the possession of the subject unit to the complainant on 31.12.2019. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 19.11.2014 to hand over the possession within the stipulated period.

31. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant-allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 19.11.2017 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. 19.11.2017 till the expiry of 2 months from the date of offer of possession (31.12.2019) which comes out to be 29.02.2020.

32. 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

33. 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. 19.11.2017 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 19.11.2017 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.

34. Complaint stands disposed of.
35. File be consigned to registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.03.2021


(Dr. K.K. Khandelwal)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Judgement uploaded on 08.06.2021.

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