

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

Complaint no. : 4538 of 2020
First date of hearing: 11.02.2021
Date of decision : 11.02.2021

Shri Ravinder Punde
R/o:- 121, Vista Villas, Greenwood City, Sector-
46, Gurugram-122001

Complainant

Versus

M/s Vatika Ltd.
Regd. office: Vatika Triangle, 4th floor, Sushant
Lok, Phase-1, Block-A, Mehrauli, Gurugram-
122002

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Shri Chaitanya Kumar
Shri Venket Rao

Advocates for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 09.12.2020 has been filed by the complainant/allottees 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. Unit and project 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. | Name and location of the project | "Sovereign Next", Sector 82A, Gurugram |
| 2. | Nature of the project | Group Housing Colony |
| 3. | DTCP Licence | <ul style="list-style-type: none"> • 113 of 2008 dated 01.06.2008 • 71 of 2010 dated 15.09.2010 • 62 of 2011 dated 02.07.2011 • 76 of 2011 dated 07.09.2011 |
| 4. | Valid up to | <ul style="list-style-type: none"> • 31.05.2018 • 14.09.2018 • 01.07.2017 • 06.09.2017 |
| 5. | Licence holder | <ul style="list-style-type: none"> • Browz Technologies Pvt. Ltd. and others • Blossom Properties Pvt. Ltd. and others |

| | | |
|-----|--|--|
| | | <ul style="list-style-type: none"> • Calida Developers Pvt. Ltd. and others • Spring Buildcon Pvt. Ltd. and others |
| 6. | HARERA Registration | 280 of 20017 dated 09.10.2017 (Phase I) |
| 7. | Registration valid up to | 31.03.2021 |
| 8. | Area registered | 34519.201 sq. mts. |
| 9. | Allotment letter | 23.04.2012 |
| 10. | Date of execution of apartment buyer's agreement | 04.12.2012 |
| 11. | Unit no. | 401, 3rd floor, Tower-D |
| 12. | Area | 2600 sq. ft. |
| 13. | Total consideration | Rs. 1,70,35,400/- (As per SOA dated 09.01.2021 at page no. 92 of the reply) |
| 14. | Total amount paid by the complainant | Rs. 1,49,79,116.61/- (As per SOA dated 09.01.2021 at page no. 92 of the reply) |
| 15. | <p>Due date of delivery of possession (14. SCHEDULE FOR POSSESSION OF THE SAID APARTMENT)</p> <p><i>The Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete</i></p> | 04.12.2015 |

| | | |
|-----|---|--|
| | <i>construction of the said Building/ said Apartment within a period of 3(Three) years from the date of execution of this Agreement unless there shall be delay or there....)</i> | |
| 16. | Specific reliefs sought | Direct the respondent to handover the physical possession of the subject apartment along with the interest for delayed period of interest. |

B. Facts of the complaint

3. The complainant submitted that subsequent to making the application for booking the apartment, the respondent issued an allotment letter dated 23.04.2012 to the complainant whereby apartment no. 301 in block D park facing and between the ground to 4th floor was allotted to the complainant.
4. The complainant submitted that the respondent has miserably failed to keep the construction as per the schedule of payment and failed to deliver the possession within the promised date of 04.12.2015. There has been a delay of more than 4 years 10 months in delivering possession.

5. The complainant submitted that the arbitrary and unfairness of the apartment buyer agreement can be derived from the clauses 9 and 23. As per the clause 9, the respondent company had the right to charge interest @ 24% p.a. for the delayed payment of instalments whereas as per the clause 23, in the case of delay in completion of the project, the complainant was entitled to get a compensation @ Rs. 5/- per sq. ft. per month of delay after expiry of grace period.
6. The complainant submitted that based on the demand of the respondent, the complainant made a total payment of Rs. 1,48,64,391/- (Rupees One Crore Forty Eight Lakhs Sixty Four Thousand Three Hundred Ninety Three only) against the total actual consideration of Rs. 1,70,10,400/- as per the buyer's agreement.

C. Relief sought by the complainant:

7. The complainant has sought following relief(s)
- Direct the respondent to deliver immediate possession of the flat along with all the promised amenities and facilities and to the satisfaction of the complainant.
 - Direct the respondent to pay interest @18% on the amount paid by the complainant from the promised date of delivery of 04.12.2015 till the actual delivery of possession.

8. 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

9. The respondent has contended on the following grounds: -
- a. That the present complaint, filed by the Complainants, is bundle of lies and hence liable to be dismissed as it is filed without cause of action.
 - b. That the present complaint is an abuse of the process of this Hon'ble authority and is not maintainable. The complainants are trying to suppress material facts relevant to the matter. The complainant is making false, misleading, frivolous, baseless, unsubstantiated allegations against the respondent with malicious intent and sole purpose of extracting unlawful gains from the respondent.
 - c. That the complaint is devoid of merits and should be dismissed with costs.
 - d. That the project of the respondent was delayed due to the various reasons beyond the control of the respondent. It is submitted that the "SOVERIGN NEXT" is large township and

respondent has already given possession large number of units in the past few years which includes residential plots, villas, independent floors, group housing flats and commercials. That due to extraneous reasons which is beyond control of the respondent, the respondent was unable to execute and carry out all necessary work for completion in some part of the project. There was change in the master layout plan of the project by the concern govt. agencies because of which the entire plot cluster map changed, and due to this there was a delay in the handing over of the possession.

10. Copies of all the relevant documents have failed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of their undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

11. 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 complainants at a later stage. The said decision of the authority has been upheld by the 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.***

12. The authority on the basis of information and explanation and other submissions made and the documents filed by the complainant and the respondent is of considered view that there is no need of further hearing in the complaint.

F. Findings on the relief sought by the complainant

Relief sought by the complainant: The respondent be directed to immediately grant the possession of unit along with compensation for the delay caused herein to the complainant.

13. In the present complaint, the complainants intend to continue with the project and 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. As per clause 14 of builder buyer's agreement, the possession was handed over within a period of 3 years from the date of execution

of this agreement. Clause 14 of the builder buyer's agreement is reproduced below:

"14 Schedule for possession of the said apartment

The developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of he said building/said apartment within a period of 3years from the date of execution of this agreement unless there shall be failure due to reasons mentioned in clauses 17,18 & 42 or due to failure of allottee(s) to pay in time the price of the said apartment along with all other charges and dues in accordance with the schedule of payments given in Annexure III or as per the demands raised by the developer from time to time or any failure on the part of the Allottee(s) to abide by any of the terms or conditions of this agreement of the terms or conditions of this agreement.

15. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the rate of 18% p.a. however, 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 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

16. 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 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 homer 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."

17. On consideration of the circumstances, the evidence and other record and submissions made by the complainant and the respondent and based on the findings of the authority regarding

contravention as per provisions of rule 28(2)(a), the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 14 of the apartment buyer's agreement executed between the parties on 04.12.2012, possession of the booked unit was to be delivered within a period of 3 years from the date of signing of the agreement which comes out to be 04.12.2015.

18. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) of the Act on the part of the respondent is established. As such the complainant is entitled for delayed possession charges @9.30% p.a. w.e.f. 04.12.2015 till the date of offer of possession, as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

E. Directions of the authority


19. Hence, the authority hereby pass the following order and issue directions under section 34(f) of the Act:

- i. The respondent shall 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. 04.12.2015 till the date of offer of possession.

- ii. The arrears of interest accrued till date of decision shall be paid to the complainant within a period of 90 days from the date of this order and thereafter monthly payment of interest till the offer of possession shall be paid before 10th of every subsequent month.
- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The respondent shall not charge anything from the complainant which is not part of the apartment buyer's agreement.
- v. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest @9.30% p.a. by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.

20. Complaint stands disposed of.

21. File be consigned to registry.


Dr. K.K. Khandelwal
(Chairman)


(Samir Kumar)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 11.02.2021

Judgement uploaded on 04.08.2021.