

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

Complaint no. : 3710 of 2020
First date of hearing: 22.12.2020
Date of decision : 11.02.2021

Shri Dinesh Chandra Gupta
R/o:- 69, Aakash Ganga Apartments, Plot No.
17, Sector-6, Dwarka, New Delhi

Complainant

Versus

M/s Vatika Limited
Regd. office: Vatika Triangle, 5th Floor,
Sushant Lok, Phase-I, MG Road,
Gurugram-122009

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Shri Sandeep Chaudhary Advocate for the complainant
Shri Mukul Sanwariya Advocate for the respondent

ORDER

1. The present complaint dated 27.10.2020 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
	Name and location of the project	"Seven Elements", Sector-89-A, Gurugram
	Nature of the project	Group Housing Colony
	DTCP Licence	41 of 2013 dated 06.06.2013
	Valid up to	05.06.2017
	Licence holder	Strong Infrabuild Pvt. Ltd. & others
	HARERA Registration	281 of 2017 dated 09.10.2017
	Registration valid up to	31.03.2021
	Area registered	91345.535 sq. mts.
	Date of execution of dwelling unit buyer's agreement	08.01.2015
	Addendum to the agreement	30.03.2015 (page no. 46 of the complaint)+

		Note:- Clause 3, 4 and 7 of the agreement dated 08.01.2015 are substituted vide this agreement)
	Unit no.	604, Type A, 6th Floor, Building A4
	Area	1620 sq. ft.
	Total consideration	Rs. 1,28,51,670/- (As per SOA dated 29.10.2019 at page no. 50 of the complaint)
	Total amount paid by the complainant	Rs. 1,04,42,097/- (As per SOA dated 29.10.2019 at page no. 50 of the complaint)
	Due date of delivery of possession (13. SCHEDULE FOR POSSESSION OF THE SAID APARTMENT <i>The Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/ said Apartment within a period of 48(Forty Eight) months from the date of execution of this Agreement unless there shall be delay or there....)</i>	08.01.2019

	Specific reliefs sought	Direct the respondent to abide by their obligations as per the BBA and complete the construction and development of the project and deliver the actual and physical possession along with interest for every month of delay.
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B. Facts of the complainant

3. The complainant submitted that in the month of March, 2015, the respondent No. 1 approached the complainant with the representation that as part of their internal arrangement, the project is hereby formally transferred to one of its group companies dedicated for the project namely, M/s Vatika Seven Elements Private Limited, i.e. Respondent No. 2, assuring that the entire responsibilities and obligations shall henceforth be carried out by the respondent No. 2 as Developer of the project and having no discretion or bargaining power, but to accept, the complainant executed an Addendum to Builder Buyer Agreement dated 30.03.2015. And since then, the complainant has been paying the amounts as called by to the said respondent No. 2.

4. The complainant submitted that despite receipt of such huge amount by the respondents and lapse of around 7 years since accepting the booking from the complainant, the respondents in collusion with each other have illegally and dishonestly did not abide by their obligation in completing the construction of the project in a timely manner and by exploiting their superior position have deliberately executed the Builder Buyer Agreement after around 2 years from the date of booking.

C. Relief sought by the complainant:

- i. Direct the respondent to abide by their obligations as per the builder buyer agreement dated 08.01.2015 read with addendum dated 30.03.2015 and complete the construction and development of the project and deliver actual and physical possession and convey the apartment no 604, 6th floor, A4 building, admeasuring 1620 sq ft in project named, Seven Elements, Sector 89A, Vatika India Next 2, Gurugram in favour of the complainant in a time bound manner.
- ii. Direct the respondent be jointly and severally be directed to pay interest for every month of delay till the handing over of the possession at the prescribed rate as per section 18(1) of the Real Estae (Regulation and Development) Act, 2016.

5. 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.
6. Despite service of notice to the respondent on his email address and to his email(connect@vatikagroup.com) as well, the respondent has opted not to file reply to the present complaint. Also, none was present on behalf of the respondent on the date of hearing. On the basis of above the authority has decided to decide the complaint as ex-parte.

D. Jurisdiction of the authority:

7. 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.*

8. 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.

E. Finding 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 cause herein to the complainant.

9. In the present complaint, the complainants intend 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."

10. As per clause 13 of builder buyer agreement, the possession was handed over within a period of 48 months from the date of execution of this agreement. Clause 13 of the builder buyer agreement is reproduced below:

13 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 the said building/ said apartment within a period of 48 months from the date of execution of this agreement unless there shall be delay or there shall be failure due to reasons mentions in clauses 14 to 17 & 37 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 I 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 ant of the terms or conditions of this agreement.

11. **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.

12. 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 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."

13. 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 13 of the dwelling unit buyer's agreement executed between the parties on 08.01.2015, possession of the booked unit was to be delivered within a period of 48 months from the date of signing of the agreement which comes out to be 08.01.2019.

14. 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. 08.01.2019 till the date of offer of possession, as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

F. Directions of the authority

15. 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. 08.01.2019 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 dwelling unit 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.

16. Complaint stands disposed of.

17. 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.