

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

Complaint no. : 790 of 2020
First date of hearing: 25.03.2020
Date of decision : 03.11.2020

Shri Manish Kumar

R/o:- RZF-537/11, St. No. 42, Sadh Nagar-II,
Palam Colony, New Delhi-110045439,
Mahipalpur, New Delhi-110037

Complainant

Versus

M/s Vatika Limited,

Office:- Vatika Triangle, 7th Floor, Sushant Lok,
Phase I, Block A, Mehrauli-Gurgaon Road,
Gurugram-122002, Haryana

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Ms. Ritu Bhalla
Shri Venket Rao

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 20.02.2020 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. 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	"Emilia Floors in Vatika India Next", Gurugram
2.	Nature of the project	Residential township
3.	Area	182 acres
4.	DTCP License	113 of 2008 dated 01.06.2008 valid up to 31.05.2018
5.	RERA registered/ not registered	Not registered
6.	Payment plan	Construction linked plan (Pg. 62 of complaint)
7.	Date of execution of dwelling unit buyer's agreement	21.09.2009
8.	Unit no.	7, St. 7, GF, Block-F
9.	Plot measuring	781.25 sq. ft.
10.	Addendum to the agreement	09.09.2016

		(Pg. 80 of complaint)
11.	New unit	46,St. K-8.1, Level-1
12.	Revised area	985 sq. ft.
13.	IInd addendum	04.02.2019 (Pg. 84 of complaint)
14.	Revised area	940 sq. ft.
15.	Total consideration	Rs. 29,68,280/- (as per SOA dated 24.01.2020 annexed at page 85 of complaint)
16.	Total amount paid by the complainant	Rs. 13,67,710.87/- (as per SOA dated 24.01.2020 annexed at page 85 of complaint)
17.	Due date of delivery of possession (as per clause 10.1 of the dwelling unit buyer's agreement-within 3 years from the date of execution of the agreement	21.09.2012
18.	Specific reliefs sought	Direct the respondent to handover the possession along with interest for delay in delivery.

B. Facts of the complainant

3. The complainant submitted that in the month of April, 2009 he booked a dwelling unit bearing no. 7 on ground floor in street no. 7, block-F admeasuring 781.25 sq. ft. for a total sale consideration

of Rs. 21,21,454/- and he paid a sum of Rs. 1,00,000/- as booking amount. The buyer agreement was executed on 21.09.2009 and a total sum of Rs. 13,67,710/- was paid to the respondent by him.

4. The complainant submitted that the respondent did not adjust the area of ground floor in the new unit and also charged extra charges in respect of lift, lobby and stair cases.
5. The complainant submitted that even after receiving nearly 65% of the total amount of the previous allotted floor/unit, the construction at the project site is still at very initial stage and there does not seem to be any hope that the project will be completed in near future.

C. Relief sought by the complainant:

- i. Pass an order to direct the respondent to pay interest at the applicable rate on account of delay in offering possession on Rs 13,67,710/- paid by the complainant as sale consideration of the said flat from the date of payment till the date of delivery of possession.
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 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.
8. 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.

E. Jurisdiction of the authority

9. 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.***

10. 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. 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 caused herein to the complainant.

11. 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."

12. As per clause 10.1 of Dwelling unit buyer's agreement, the possession was handed over within a period of 3 years from the date of execution of this agreement. Clause 10.1 of the dwelling unit buyer's agreement is reproduced below:

10.1 Schedule for possession of the said independent dwelling unit the company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said unit within a period of three years from the date of execution of this agreement unless there shall be delay or there shall be failure due to reasons mentioned in clause (11.1),(11.2),(11.3) and clause (38) or due to failure of allottee(s) to pay in time the price of the said independent dwelling unit along with all other charges and dues in accordance with the schedule of payment given herein in annexure III or as per the demands raised by the company 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. However, it is agreed that in the event of any time overrunning completion of construction of the said building/said dwelling unit, the company shall be entitled to reasonable extension of time for completing the same."

13. **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.

14. 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."

15. 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 10.1 of the dwelling unit buyer's agreement executed between the parties on 21.09.2009, 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 21.09.2012. Since, the respondent has not offered the possession of the subject unit to the complainant so far. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the buyer's agreement dated 21.09.2009 to hand over the possession within the stipulated period.
16. 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 are entitled for delayed possession charges @9.30% p.a. w.e.f. 21.09.2012 till the date of

handing over the possession, as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

G. Directions of the authority

17. 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. 21.09.2012 till the date of handing over the 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 are 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 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.

18. The authority has decided to take suo-moto cognizance against the promoters for not getting the project registered and for that separate proceeding will be initiated under the Act. The registration branch is directed to take necessary action in this regard against the respondents. A copy of this order be endorsed to the registration branch.
19. Complaint stands disposed of.
20. File be consigned to registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member


Dr. K.K. Khandelwal
(Chairman)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.11.2020

Judgement uploaded on 04.08.2021.