

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

Complaint no. : 3322 of 2020
First date of hearing: 12.01.2021
Date of decision : 09.07.2021

1. Nitin Singhal
2. Surendra Kumar Singhal
Both RR/o: - A-43, Shivalik, New Delhi

Complainants

Versus

M/s TATA Housing Development Company
Limited
Regd. Office at: - TATA Housing Development
Company Limited, TRIL Commercial Centre,
Intellion Edge, Tower-A, 1stFloor, Sector-72,
Gurgaon, Haryana-122001 सत्यमेव जयते

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Vijay Kumar Goyal

**Chairman
Member
Member**

APPEARANCE:

Sh. Rajender Nath Dikshit Advocate for the complainants
Sh. Mohit Jolly Advocate for the respondent

ORDER

1. The present complaint dated 13.10.2020 has been filed by the complainants/allottees 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 as provided under the provision of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainants, 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	"TATA PRIMANTI", Sector- 72, Gurugram
2.	Project area	36.25 acres
3.	Nature of the project	Group Housing Project
4.	DTCP license no. and validity status	i. 155 of 2008 dated 14.08.2008 valid upto 13.08.2018. ii. 200 of 2008 dated 08.12.2008 valid upto 07.12.2018
5.	Name of licensee	M/s Tata Housing Development Company Limited
6.	RERA Registered/ not registered	Registered vide no. 98 of 2017 dated 28.08.2017 valid upto 30.12.2020
7.	Unit no.	904, 9 th floor Tower- T7 [page no. 31 of complaint]



8.	Measurement of unit	3355 sq. ft.
9.	Date of execution of apartment buyer's agreement	02.01.2014 [page no. 29 of complaint]
10.	Allotment letter	31.03.2013 [Page 26 of complaint]
11.	Payment plan	Construction linked payment plan. [page no. 62 of complaint]
12.	Total consideration	Rs.3,14,13,400/- [as per statement of account dated 09.12.2020 page no. 82 of reply]
13.	Total amount paid by the complainants	Rs.3,16,18,366.15/- [as per statement of account dated 09.12.2020 page no. 82 of reply]
14.	Due date of delivery of possession as per clause 4.2 of r/w clause 4.4 of the apartment buyer agreement [Page 40 & 41 of complaint]	October 2017 [Grace period is not allowed]
15.	Date of offer of possession	19.03.2018 [page no. 87 of complaint]
	Date of revised offer of possession	22.05.2019 [Page no. 72 of reply]
16.	Date of occupation certificate	09.03.2018 [Page 73 of reply]
17.	Delay in handing over possession till offer of possession i.e. 22.05.2019 + 2 months i.e. 22.07.2019	1 years 8 months and 22 days

B. Facts of the complaint

3. The complainants submitted that they have booked an apartment/flat bearing no. T - 7/904, 4th floor in the respondent project TATA Primanti in Sector 72, Gurugram on 04.12.2012 by depositing Rs.20 lakhs against the total sale consideration of Rs.3,17,48,900/- plus Rs. 9,50,000/- for car parking charges. Allotment letter in respect of the flat was issued on 31.03.2013 while the BBA was signed on **16.11.2013**.
4. As per clause 4.2 of the builder buyer's agreement the respondent was to hand over the possession of the flat to the complainants on or before the month of October 2017. However, the respondent issued a letter dated 03.10.2017 claiming force majeure as per clause 4.4 of the agreement and extended the time for handing over of possession till 02.03.2018. It was further mentioned in the letter that the club house was operational, and the flat would be made ready by May 2018 and that the owners could start their interior works before the occupation certificate is received. According to the complainants, the force majeure condition was not brought to their notice between 2013 to 2017 when the respondent had been raising regular invoices for payments as per the construction linked plan.



5. The complainants took home loan from the Citibank and payments were to be made against the construction linked plan.
6. The complainants visited the project in the month of January 2018 and thereafter wrote an email dated 09.01.2018 to the respondent apprehending therein that the handing over of possession of the flat did not seem to be possible in May 2018. However, the respondent issued the first offer of possession letter on 19.03.2018 on receipt of which the complainants did not take the possession as the flat was incomplete. The respondent accepted this fact and accordingly issued a revised possession letter on 23.08.2018 thereby giving the date of possession as 29.9.2018.
7. The complainants submitted that they had already deposited Rs. 3,17,00,829/- till 02.06.2018 which also includes the credit of Rs. 4,56,280/- given by the respondent and Rs. 1,40,910/- as GST setoff and Rs. 3,15,370/- as EDC credit given by the respondent; however, the respondent has charged Rs. 8,60,925/- towards delayed instalments at the rate of 18% p.a. which is contrary to the RERA guidelines.
8. The grievance of the complainants is that after getting revised letter of possession they sent several emails to the respondent for recalculation/ waiver of interest but to of no effect, rather



the respondent is not allowing any waiver. After mentioning that some payments deposited by the complainants were missing in the statement of account and which were brought to the notice of the respondent even before the amnesty scheme the complainants once again brought to the notice of the respondent on 16.03.2019 to send the correct statement but the respondent did not do so and in the absence of correct statement the complainants could not deposit the balance amount. It is stated that the respondent came with an amnesty scheme with effect from 20.03.2019 valid up to 30.4.2019 thereby offering some waivers/reliefs/benefits but due to the wrong statement of account supplied to the complainants, the complainants could not get the amount released from the Citibank during amnesty scheme period also.

9. On 02.05.2019 the complainants wrote to the respondent to increase more of amnesty scheme but to of no effect. However, 23.07.2019 on getting correct statement of account from the respondent the complainants once again approached the respondent to consider their case under the amnesty scheme as the delay was caused due to supply of wrong statement to them. But the respondent did not exceed to their request. Since then, the complainants time and again vide the emails dated 13.11.2019 18.11.2019, 03.12.2019, and telephonically on

03.06.2020 have requested the respondent to adjust/waive the amount but to no effect. Hence, this complaint for issuing direction to the respondent to pay interest with effect from October 2017 till date on the amount deposited by the complainants i.e. Rs.3,17,00,829/- till date.

C. Relief sought by the complainants:

10. The complainants have sought following relief:

- a) In case failure to give possession, then the respondent be directed to give interest from the date of possession given in the BBA till the date by the builder i.e., oct 2017 or till the date at the rate as per RERA guidelines on the amount paid Rs. 3,17,00,829/-
- b) Direct the respondent to give delayed payment of instalment by the allottees at the prescribed rate of interest for delay payment @ 18% p.a. charged by the builder which is to be charged as per RERA guidelines i.e., MCLR of SBI plus.

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 to plead guilty or not to plead guilty.

D. Reply by the respondent

12. The respondent has contested the complaint on the following grounds. The submission made therein, in brief is as under: -

13. The respondent has filed a reply in the shape of an affidavit of Mrs. Sanjana Mago who is stated to be the authorised representative of the respondent. It is stated that post issuing the allotment letter, the respondent vide letter dated 24.11.2017 and 22.5.2019 and through emails requested the complainants to pay the stamp duty and registration charges and come forward to complete the registration formalities; however, the complainants did not come forward to register the agreement/ conveyance deed towards the change of the apartment in question.
14. It is further stated that the respondent faced several difficulties and hurdles during the period of construction but despite that the respondent completed the construction of Tower 7 (in which the apartment allotted to the complainants is situated) and offered the possession of the said apartment to complainants on 19.03.2018 after receiving the occupation certificate on 09.03.2018; the possession of the apartment was offered to the complainants subject to payment of the outstanding amounts by them as per the demands raised and also requested the complainants to execute and register the conveyance deed. But, however, till date the complainants have not made any further payments post offering the possession of the apartment and have failed and neglected to

take the possession of the apartment; delay in paying the instalments prior to offer of possession has caused accruing of interest and post issuing possession of letter dated 19.03.2018. The complainants have not made the payment despite first reminder sent on 06.08.2018 and the second reminder sent on 21.08.2018. According to the respondent, in addition to the same the complainants are also liable for interest bearing maintenance security (IBMS) and monthly maintenance till the time they take the possession of letter.

15. It is further stated that despite sending final reminder dated 22.11.2018 and a notice dated 10.07.2020 to the complainants thereby calling upon them to pay the outstanding amounts and also to take the possession of the apartment simultaneously to execute and register the conveyance towards sale of the apartment the complainants have failed and neglected to respond to the said notice and did not bother to comply with the same which act on the part of the complainants not only amounts to breach of the terms and conditions agreed by them under the apartment buyer agreement/ application but is also an act of violation of the provisions of the Act and the rules.
16. The respondent has put reliance on clause 4.4 of the apartment buyer agreement dealing with force majeure conditions and has stated that it was only after the offering of the possession

of the apartment to the complainants on 19.03.2018 within the extended period of 6 months that the complainants started levelling frivolous allegations to seek waiver of interest and delay compensation when there is no such delay in completion of tower no. 7 and offering the possession of the apartment to the complainants.

17. It is further stated that vide email dated 27.10.2020 the complainants repeated the allegations and informed the respondent that they are moving to the RERA authority and that they are paying the balance towards possession of the said apartment and requested to hand over the possession of the apartment but the date the complainants have not further payments. It is stated that, the present complaint is liable to be rejected/ dismissed on the following preliminary grounds, each of which is without prejudice to and in the alternative to one another.

E. Jurisdiction of the authority

18. 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.*

F. Findings on the relief sought by the complainants.

Relief sought by the complainants: to pay interest from the due date of possession given by the agreement to till date by the builder i.e. w.e.f. October 2017 till the actual offer of possession at the prescribed rate @18% p.a.

19. In the present complaint, the complainants 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."

20. Clause 4.2 of the apartment buyer provides for handing over of possession and is reproduced below:

"4. POSSESSION

4.2 Possession Time and Compensation

THDCL shall endeavor to give possession of the said Premises to the Purchaser(s) on or before OCTOBER 2017 after providing necessary infrastructure in the sector by the Government but subject to force majeure circumstances and reason beyond the control of THDCL. THDCL on obtaining the certificate for occupation and used by the Competent Authority shall hand over the said Premises to the Purchaser(s) of his/her/their occupation and use and subject to the purchaser(s) having complied with all the terms and conditions of this agreement.....”

21. The authority has gone through the possession clause of the agreement and observed that this is a matter very rare in nature where builder has specifically mentioned the date of handing over possession rather than specifying period from some specific happening of an event such as signing of apartment buyer agreement, providing necessary infrastructure in the sector by the Government but subject to force majeure circumstances and the reason beyond the control of the respondent. This is a welcome step, and the authority appreciates such firm commitment by the promoter regarding handing over of possession but subject to observations of the authority given below.

22. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the rate of 18% 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 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.

23. 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."

24. 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., 09.07.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
25. The definition of term 'interest' as defined under section 2(z) 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;"

26. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 9.30% by the respondents/promoters which is the same as is being granted to the complainants in case of delayed possession charges.

27. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the said apartment within stipulated time period i.e. October 2017 and has sought further extension of a period of 6 months in lieu of force majeure circumstances vide clause 4.4 of the said agreement (after the expiry of the said time period). It may be stated that asking for the extension of time in completing the construction is not a statutory right nor has it been provided in the rules. This is a concept which has been evolved by the promoters themselves and now it has become a very common practice to enter such a clause in the agreement executed between the promoter and the allottee. It needs to be emphasized that for availing further period for completing the construction, the promoter must make out or establish some compelling circumstances which were in fact beyond its control while



carrying out the construction due to which the completion of the construction of the project or tower or a block could not be completed within the stipulated time. In the present complaint nothing has been placed on record to corroborate the happening of any such circumstance which may be considered as something which is beyond the control of the respondent/promoter. Accordingly, this grace period of 6 months cannot be allowed to the respondent promoter as this stage.

28. 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 4.2 of the apartment buyer's agreement executed between the parties on 02.01.2014, possession of the booked unit was to be delivered within stipulated time i.e., by October 2017. Occupation certificate was received by the respondent on 09.03.2018 and the revised possession of the subject unit was offered to the complainants on 22.05.2019. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainants as per the terms and conditions of the apartment buyer's

agreement dated 02.01.2014 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 02.01.2014 to hand over the possession within the stipulated period.

29. 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 09.03.2018. The respondent offered the possession of the unit in question to the complainants on 22.05.2019, so it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. This 2 months' of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they had to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due

date of possession i.e. 30.10.2017 till the expiry of 2 months from the date of offer of possession (22.05.2019) which comes out to be 22.07.2019.

30. 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 complainants are entitled to delayed possession at prescribed rate of interest i.e. 9.30% p.a. w.e.f. 30.10.2017 till 22.07.2019 as per provisions of section 18(1) of the Act read with rule 15 of the rules

G. Directions of the authority

31. Hence, the authority hereby passes this order and issues the following 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 interest at the prescribed rate i.e. 9.30 % per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 30.10.2017 till 22.07.2019 i.e. expiry of 2 months from the date of offer of possession (22.05.2019). The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per rule 16(2) of the rules.

ii. 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.

iii. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.


iv. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

32. Complaint stands disposed of.

33. File be consigned to registry.


(Samir Kumar)
Member


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.07.2021

Judgement uploaded on 12.08.2021