

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

Complaint no. : 3403 of 2020
First date of hearing: 13.11.2020
Date of decision : 09.07.2021

Amarjit Singh
R/o: -18 P USA Road,
New Delhi- 110005

Complainant

Versus

1. M/s Tashee Land Developers.
2. M/s KNS Infracon Private Limited
Both having Regd. office at: 517, A
Narain Manzil, 23 Barakhamba Road,
Cannaught Place, New Delhi- 110001

Respondents

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Sh. Aditya Bhardwaj
None

Advocate for the complainant
Advocate for the respondents

EX-PARTE ORDER

1. The present complaint dated 12.10.2020 has been filed by the complainant/allottee 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. Since, the buyer's agreement has been executed on 29.12.2014 i.e. prior to the commencement of the act *ibid*, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of statutory obligation on part of the promoters/respondents in terms of section 34(f) of the act *ibid*.
3. The particulars of unit details, 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 Gateway", Sector- 111, Gurugram.
2.	Project area	10.462 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	34 of 2011 dated 16.04.2011 valid till 15.04.2024
5.	Name of licensee	KNS Infracon Pvt Ltd & 3 others



6.	RERA Registered/ not registered	Registered vide no. 12 of 2018 dated 10.01.2018
7.	RERA registration valid up to	31.12.2020 for phase-I (tower A to G) and 31.12.2021 for phase-II (tower H to J)
8.	Unit no.	H/701, 7 th floor, Tower-H [page 66 of complaint]
9.	Unit measuring	2675 sq. ft.
10.	Date of execution of Flat buyer agreement	29.12.2014 [page 64 of complaint]
11.	Payment plan	Construction linked payment plan. [page 99 of complaint]
12.	Total consideration	Rs.1,25,66,829.50/- [as alleged by complainant page no. 12 of complaint]
13.	Total amount paid by the complainant	Rs.1,18,56,173/- [as alleged by complainant page no. 12 of complaint]
14.	Due date of delivery of possession as per clause 2.1 of the flat buyer agreement 36 months from the date of sanction of building plan & a grace period of 180 days, after the expiry of 36 month, for applying and obtaining the occupation certificate [Page 87 of complaint]	07.06.2015 As per information obtained by planning branch building plan approved i.e. 07.06.2012. [Note- Grace period not allowed]
15.	Delay in handing over possession till the date of order i.e. 09.07.2021	6 years 1 months and 2 days
16.	Status of the project	On going

B. Facts of the complaint

4. That in the month of March 2012, the respondent launched a group housing project under the name and style of "Capital



Gateway” located in Sector 111, Gurugram, Haryana bearing license no 34 of 2011 issued by DTCP Haryana. It was stated by the agents and brokers of respondent that the project has strategic location as the sector in which its located is adjacent to Delhi Border, Diplomatic enclave, and Airport. The project will relate to all modes of transport and is located on one of the most strategic roads that is Dawarka Expressway which is connected to National Highway Delhi - Jaipur. In this Regard a brochure was also given by respondent.

5. That based on the assurance of timely delivery and premium quality they have agreed to book/purchase a flat admeasuring 2675 sq. ft. in the project called ‘Capital Gateway’ at the rate of Rs. 3,900/- per Sq. Ft. The booking was done by signing of application form on 13.03.2012, along with same an advance payment of Rs. 26,08,125/-, being 25% of the cost of the flat was made by complainant vide cheque No. 620102, dated 13.03.2012. Against the above said payment a receipt bearing no 2100 dated 21.03.2012 was issued to the complainant by respondent. On the said date the confirmation of unit was also given by the complainant to the respondent in which description of unit along with other details were mentioned. That the unit allotted to complainant was bearing number H-701 in Tower H which attracted additional charges of Rs 175/- per sq. ft as preferential



location charges (PLC) for corner and landscaping. That the respondent also raised an additional demand of Rs 67,159/- vide notice dated 22.03.2012 towards 25% of the service tax. The said amount was duly paid by the plaintiff vide cheque no. 620105 dated 26.03.2012.

6. That the respondent sent a demand letter dated 07.06.2012 followed by reminder letter dated 1.11.2012 and 13.02.2013. In the said letters an amount of Rs.15,62,336/- was demanded on account of the booking made by the complainant. Upon receiving the demand letters the complainant promptly informed the respondent that the demand is in contravention to the scheme opted by the complainant and the next demand was only payable upon beginning of the excavation. On being informed the respondent apologized and asked the complainant to consider the said demands as null and void. Thereafter in the month of February 2013 a reminder letter making demand of Rs.15,62,336/- was sent. The said letter also comprised of the delayed penal interest which was required to be paid by the complainant. The letter dated 01.02.2013 was followed by reminder letters dated 11.03.2013 and 13.05.2013 and finally 30.09.2013 in which installment due was demanded along with the delayed interest.



7. The complainant upon receiving notice dated 30.09.2013 again approached the respondent and informed them that the demands made till 30.09.2013 were not legal in light of the plan opted by the complainant. After rounds of meeting and discussion between the parties the respondent admitted its mistake and asked the complainant to make the payment of rupees Rs.15,62,336/- towards the pending demand. The said payment was made by cheque bearing number 303390 drawn on Citibank dated 12.10.2013. Thereafter the respondent gave a summary in detail dated 22.11.2013 and it clarifies the complainant has made all the payment in accordance with the demand raised by the respondent. Thereafter, the fresh demand of Rs.15,63,618/- was raised by letter dated 30.08.2014 and the same was duly paid vide cheque No. 647200 dated 06.09.2014, drawn on Citibank New Delhi.
8. The complainant submitted that the respondent sent a draft of buyers agreement dated 29.12.2014 to complainant. On receiving the same the complainant expressed its reservations regarding few clauses of the agreement and sought meeting regarding the same. That in this regard the complainant wrote communications dated 04.03.2015, 10.04.2015; and further in communication dated 03.06.2015 complainant also raised issue of increase in the BSP by Rs.21



lac. After numerous follows ups a meeting between the complainant and respondent took place on 17.06.2015 in which various clauses of buyer agreement were discussed being one sided and detrimental to interest of complainant. In the said meeting the respondent also promised to issue correct account statement. It was stated by the respondent that they shall revert in day or two on the issues raised by the complainant. However Respondent never replied back on the issue raised, failing which the complainant sent Email dated 20.07.2015 raising all issues.

9. That the respondent sent demand letter 02.07.2016 toward the casting of 12th floor. The said communication was responded by the complainant through email dated 05.07.2016 pursuant to which a meeting was held on 09.09.2016, and thereafter an additional amount of Rs17,49,535/- was paid vide cheque no. 000284 dated 22.02.2017 drawn on Citibank in which complainant reserved its rights to claim interest back as this amount also included the interest which was illegally charged by the defendant no.1. Against the above said payment a receipt bearing no 8455 dated 01.03.2017 was issued to the parties.
10. That in April 2017, another fresh demand was raised for Rs. 8,40,838/- against the Internal Brink Work & Plaster and the said demand was paid on 30.04.2017. Against the above said



payment a receipt bearing no 8612 dated 08.05.2017 was issued to the complainant by respondent.

11. The complainant further submitted that it is pertinent to mention that the complainant had paid an amount of Rs.1,18,56,173/- against the total consideration of Rs.1,25,66,825/- till April 2017. That Since 2017 there has been no development in the project. However recently the respondent made a committee of few allottees which has been handpicked by the respondent to supervise the construction and collect money knowing well the same is illegal and undemocratic and pending for adjudication before court of law.
12. That the present project at the date of filing of the present complaint is construction phase only civil structure is barely ready the actions of the respondent has been clearly in violation of the act and rules made there under as the respondent after having all the permissions way back in 2011 has failed to deliver the project within the time given in the agreement. In light of same the complainant requests the authority to levy penalty in form of interest at the rate of 24% for the period of delay.
13. That the facts and circumstances of the present case clearly makes out a case where the Respondent has blatantly failed to perform its obligation to give position in terms of the



commercial premises buyers agreement and hence in the present scenario complaint is filed under section 31 of the Haryana Real Estate Regulation and Development Act 2016.

C. Relief sought by the complainant:

14. The complainant has sought following relief:

(i) Direct the respondents to hand over the possession along with 24% interest per annum from the promissory date of delivery of the flat in question till actual delivery of the flat;

15. The authority issued a notice dated 16.10.2020 of the complaint to the respondents by speed post and also on the given email address at info@tashee.in. The delivery reports have been placed in the file. Thereafter, a reminder notice dated 18.06.2021 for filing reply was sent to the respondents on email address at info@tashee.in. Despite service of notice, the respondents have preferred neither to put in appearance nor file reply to the complaint within the stipulated period. Accordingly, the authority is left with no other option but to decide the complaint ex-parte against the respondents.

16. 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 based on these



undisputed documents and submission made by the complainant.

E. Jurisdiction of the authority

17. 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.*

G. Findings on the relief sought by the complainant

Relief sought by the complainant: Directs the respondents to hand over the possession along with prescribed interest per annum from the promissory date of delivery of the flat in question till actual delivery of the flat.

18. In the present complaint, the complainant intends to continue with the project and is seeking delayed 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."

19. Clause (2.1) of the flat buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below: -

2. POSSESSION OF UNIT: -

2.1. Subject to Clause 9 herein or any other circumstances not anticipated and beyond control of the first party/confirming party and any restraints/restrictions from any courts/authorities and subject to the purchaser having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement including but not limited timely payment of total sale consideration and stamp duty and other charges and having complied with all provisions. Formalities, document., as prescribed by the first party/confirming party, whether under this agreement or otherwise, from time to time, the first party/confirming party proposes to hand over the possession of the flat to the purchaser within approximate period of 36 months from the date of sanction of the building plan of the said colony. The purchaser agrees and understands that the first Party/confirming party shall be entitled to a grace period of 180 (one hundred and eighty) days, after the expiry of 36 months, for applying and obtaining the occupation certificate in respect of the colony from the concerned authority. The first party/confirming party shall give notice of possession, and in the event the purchaser fails to accept and take the possession of the said flat within 30 days of, the purchaser shall be deemed to be custodian of the said flat from the date indicated in the notice of possession and the said flat shall remain at the risk and cost of the purchasers.

20. 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 application, and the complainant not being in



default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoters. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoters and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoters 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 flat buyer agreement by the promoters are 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.

21. **Admissibility of grace period:** The promoters have proposed to hand over the possession of the apartment within a period of 36 months from date of sanction of building plans and further provided in agreement that promoters shall be entitled to a grace period of 180 days for applying and obtaining occupation certificate in respect of



group housing complex. As a matter of fact, the promoters have not applied for occupation certificate within the time limit prescribed in the flat buyer agreement. As per the settled law one cannot be allowed to take advantage of his own wrong. Accordingly, this grace period of 180 days cannot be allowed to the promoters 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.

22. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the rate of 24% 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



promoters, 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 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."

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(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;"

26. Therefore, interest on the delay payments from the complainant 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 complainant in case of delayed possession charges.
27. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondents are 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 2.1 of the agreement executed between the parties on 29.12.2014, the possession of the subject apartment was to be delivered within 36 months from the date of sanction of building plans i.e. 07.06.2012. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession is 07.06.2015. The respondents have failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondents/promoters to fulfil their obligations and responsibilities as per the agreement to hand over the



possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondents is established. As such the allottee shall be paid, by the promoters, interest for every month of delay from due date of possession i.e., 07.06.2015 till the handing over of the possession, 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.

28. The allottee requested for fresh statement of account of the unit based on the above determinations of the authority.

H. Directions of the authority

29. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions entrusted to the authority under section 34(f):

- i. The respondents are directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay from the due date of possession i.e., 07.06.2015 till the date of handing over of possession.
- ii. The promoters shall credit delayed possession charges in the 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 07.06.2015 till the date of order by the authority shall be paid by the promoters to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoters to the allottee before 10th of the subsequent month 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 promoters, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondents/promoters which is the same rate of interest which the promoters shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
 - vii. The respondents shall not charge anything from the complainant which is not the part of the agreement.



- vii. The respondents shall not charge anything from the complainant which is not the part of the agreement. However, holding charges shall not be charged by the promoters 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 promoters are directed to furnish to the allottee statement of account within one month of issue of this order. If there is any objection by the allottee on statement of account, the same be filed with promoters after fifteen days thereafter. In case the grievance of the allottee relating to statement of account is not settled by the promoters within 15 days thereafter, then the allottee may approach the authority by filing separate application.
30. Complaint stands disposed of.
31. File be consigned to registry.


(Samir Kumar)
Member

V.I - 
(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