

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

Complaint no. : 1781 of 2021
First date of hearing : 13.05.2021
Date of decision : 29.07.2021

1. Deepmala Gupta
2. Naveen Kumar Srivastava
Both RR/o: L-49D, First Floor, Block L,
Saket, New Delhi-110017

Complainants

Versus

1. M/s Emaar MGF Land Ltd.
2. M/s Kamdhenu Projects Pvt. Ltd.
(Now, Emaar India Limited).
Address: 306-308, Square One, C-2,
District Centre, Saket, New Delhi-110001.

Respondents

CORAM:

Shri Samir Kumar
Shri Vijay Kumar Goyal

Member
Member

APPEARANCE:

Shri Nilotpal Shyam
Shri J.K. Dang

Advocate for the complainants
Advocate for the respondents

ORDER

1. The present complaint dated 16.04.2021 has been filed by the complainants/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. Project and unit related details

2. The particulars of the project, the details of 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	"Imperial Gardens", Sector 102, Gurugram.
2.	Project area	12 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	107 of 2012 dated 10.10.2012 Valid till 09.10.2020
5.	Name of licensee	Kamdhenu Projects Pvt. Ltd. and Emaar MGF Land Ltd.
6.	HRERA registered/ not registered	Registered in two phases i. 208 of 2017 dated 15.09.2017 [Valid up to 31.12.2018 for 49637 sq. mtrs. and extension granted vide no.3/2019 dated 02.08.2019 which is extended up to 31.12.2019] ii. 14 of 2019 dated 28.03.2019 (Phase II) [Valid up to 17.10.2018 for 4.57 acres]
7.	Occupation certificate granted on	17.10.2019 [Page 116 of reply]
8.	Provision allotment letter dated	14.11.2018 [Page 46 of reply]
9.	Unit no.	IG-04-1503, 15 th floor, tower no. 04 [Page 46 of complaint]
10.	Unit measuring	1228.17 sq. ft. (Carpet area)

		2000 sq. ft. (Super area) [Page 46 of complaint]
11.	Date of execution of buyer's agreement	07.12.2018 [Page 34 of complaint]
12.	Payment plan	Time linked payment plan [Page 85 of complaint]
13.	Total consideration as per statement of account dated 27.04.2021	Rs.1,24,96,400/- [Page 110 of reply]
14.	Total amount paid by the complainants as per statement of account dated 27.04.2021	Rs.1,14,34,165/- [Page 111 of reply]
15.	Due date of delivery of possession as per clause 7(a) of the said agreement i.e. the company shall offer the possession of the unit to the allottee on or before 31.12.2018 or such time as may be extended by the competent authority. [Page 54 of complaint]	31.12.2018
16.	Date of offer of possession to the complainants	i. 06.11.2019 [Page 112 of complaint] ii. 11.11.2019 [Revised, page 115 of complaint]
17.	Unit handover letters dated	09.10.2020 [Page 121 to 126 of reply]
18.	Delay in handing over possession till the handing over of possession i.e. 09.10.2020	1 year 9 months 9 days

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:

- i. That the respondent no.1 through their representative had approached the complainants and represented that the respondent's residential project namely "Imperial Gardens"

- located at Sector-102, Dwarka Expressway, Gurugram, Haryana will effectively serve the residential purpose of complainants and his family. It was further represented that the impugned project has the best of amenities.
- ii. That the respondent no.1 claimed that a license from the Director General, Town and Country Planning, Haryana Chandigarh has been obtained in collaboration with respondent no.2 for development of the project land into group housing complex comprising of multi-storied residential apartment in accordance with law bearing no. 107 of 2012 dated 15.10.2012. Further, the respondent no.2 is wholly owned subsidiary of respondent no.1 and is the owner of the project land whereby the respondent no.1 entered into a collaboration agreement. All the payments by the complainants have been made to respondent no. 1.
- iii. That based on the aforementioned representation and enquiries made, the complainants started payment from 31.10.2018. After making payment of Rs.9,00,000/- towards booking amount, the unit bearing no. IG-03-1104 proposed to be built at 15th floor in the said project was allotted to the complainants vide provisional allotment letter dated 14.11.2018. Subsequently, both the parties entered into buyer's agreement on 07.10.2018 (sic 07.12.2018). All the clauses of said buyer's agreement are not in accordance with the mandate as prescribed under model agreement of the rules

made under the Act. It is submitted that said clauses of buyer's agreement to the extent of incongruency with the Act read with relevant rules and regulations shall not be binding on the complainants.

- iv. That as per the buyer's agreement, the respondents agreed to sell the said unit having carpet area of 1228.17 sq. ft. for an amount of Rs.1,24,64,011/- plus GST in accordance with payment plan annexed with the buyer's agreement. It is submitted that the buyer agreement inter alia levies a charge of Rs.1,26,000/- towards operational charge, however, there is not even a whisper of as to what does the operation charges shall constitute off and the complainants were compelled to sign on dotted lines. Therefore, it is *ex facie* one-sided arbitrary and not binding on the complainants in view of law laid down by Hon'ble Supreme Court in **Pioneer Urban Land & Infrastructure Ltd. V. Geetu Gidwani Verma and Anr. CA No. 1677 of 2019 judgment dated 4/02/2019**. As per clause 7(a) of the buyer's agreement, the possession date for the said unit was agreed to be 31.12.2018. Clause 12 of the buyer's agreement stipulates that the respondent, if failed to deliver the possession of the said unit within the stipulated time frame and subject to the force majeure conditions, shall pay compensation for the entire period till the date of handing over the possession in accordance with the Act. The complainants made a total payment

of Rs.1,14,33,552/- towards the said unit in accordance with the demand raised by the respondent no.1. Despite the said payments, the respondents failed to deliver the possession in agreed timeframe (i.e. December, 2018) for reasons best known to them and the respondent no.1 never bothered to intimate reasons and reasoning for the delay to the complainants. Therefore, the respondent no.1 had breached the sanctity of the agreement to sell i.e. buyer's agreement. The offer of possession was initially made to the complainants by the respondent no.1 on 06.11.2019 pursuant to the receipt of the occupation certificate of the impugned tower as communicated by the respondent no.1. However, the complainants were shocked to see that there were certain material discrepancies with regard to the balance amount to be paid by the complainants to the respondent no.1. The complainants raised the issue and accordingly the letter of offer of possession was issued by the respondent no.1 on 11.11.2019. On perusal of demand annexed with the offer of possession letter dated 11.11.2019, it was found that the respondent no.1 raised demand of 24 months advance common area maintenance charges and accordingly, vide email dated 26.12.2019, the complainants contested that these charges are ex-facie one-sided and arbitrary. The respondent no.1 vide email dated 30.12.2019 tried to justify the charges on vague ground of operational convenience which is not permissible under law.



v. That the complainants smelling something fishy towards continuous pushover of handover of possession of the said unit kept following up with the respondent no.1. The respondent no.1 vide email dated 13.07.2020 informed that the said unit would be ready for physical possession only on 29.07.2020. Again, vide email dated 28.07.2020, the respondent no.1 postponed the handover of the said unit on the ground that few finishing is still pending. Further few more deadlines for handing over possession was given by the respondent no.1 which was postponed time and again on the pretext that the said unit is not ready. It shows that the offer of possession mad in November 2019 was nothing but farce as the impugned unit as not ready for possession even in July 2020. Finally, the physical possession of the said unit was handed over by the respondent no.1 to the complainants only on 09.10.2020. Therefore, it is submitted that the offer of possession letter dated 11.11.2019 was nothing but farce as the impugned unit work was completed only in October 2020 and handover of the physical possession was done only on 09.10.2020 and that too for no fault of the complainants. Accordingly, the respondent no.1 is under an obligation to pay delayed possession interest at the prescribed rate from the date of handing over possession as per buyer's agreement till the date of actual possession of the said unit i.e. from 31.12.2018 till 09.10.2020.

vi. That there is above 21 months of unexplained delay in handing over the possession by the respondent no.1 to the complainants. The complainants submitted that it is worthwhile mentioning that they were charged delayed interest charges for making delayed payment which was merely Rs.547/-. Therefore, the complainants have genuine grievance which requires the intervention of the hon'ble authority in order to do justice with them. Accordingly, the respondent no.1 is under an obligation to pay interest for delayed period of handing over possession i.e. from 31.12.2018 till the actual handing over the possession i.e. till 09.10.2020 in accordance with section 18 of the Act. Hence, this complaint.

C. Relief sought by the complainants

4. The complainants are seeking the following reliefs:

- i. Direct the respondent no.1 to pay interest at prescribed rate for the delayed period of handing over the possession calculated from the date of delivery of possession as mentioned in the buyer's agreement i.e. from 31.12.2018 till the actual date of handing over the possession of the impugned unit i.e. till 09.10.2020 on the amount paid by the complainants toward the said unit.
- ii. Direct the respondent no.1 to declare that the operational charges as illegal and accordingly allow consequential benefits.
- iii. Direct the respondent no.1 to adjust the amount payable to the complainants as per prayer (i) in the amount raised vide demand

letter dated 08.03.2021 and pay the balance amount to the complainants, if any.

- iv. Any other order or relief which this authority may deem fit and proper in the facts and circumstances of the case, may kindly be passed in favour of the complainants and against the respondents.
5. On the date of hearing, the authority explained to the respondents/promoters 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 filed by the respondents

6. The respondents have contested the complaint on the following grounds:
 - i. That the complainants have filed the present complaint seeking interest for alleged delay in delivering possession of the unit booked by the complainants. It is respectfully submitted that complaints pertaining to interest and compensation etc. are to be decided by the adjudicating officer under the Act read with rule 29 of the rules and not by this hon'ble authority. The present complaint is liable to be dismissed on this ground alone.
 - ii. That that the rights and obligations of complainants as well as respondent no. 1 are completely and entirely determined by the covenants incorporated in the buyer's agreement dated 07.12.2018 which continues to be binding upon the parties thereto with full force and effect. It is submitted that as per clause 7 of the buyer's agreement, the possession of the unit in question was liable to be

delivered by 31.12.2018 or such time as may be extended by the competent authority subject to the allottee(s) having strictly complied with all terms and conditions of the buyer's agreement. It has also been provided therein that the date for delivery of possession of the unit would stand extended in the event of occurrence of the force majeure circumstances. The complainants have completely misconstrued, misinterpreted and miscalculated the time period as determined in the buyer's agreement. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 07.12.2018.

iii. That the complainants have delayed payment of instalments to respondent no. 1. Statement of account dated 27.04.2021 maintained by respondent no. 1 in its due course of business reflects the delay in remittance of instalments on the part of the complainants. It is submitted that the remittance of the instalments on time was an indispensable requirement under the buyer's agreement. The complainants have failed to fulfil their obligations and duties prescribed under the buyer's agreement. Therefore, the due date of delivery of possession of the unit in question is not liable to be determined in the manner claimed in the false and frivolous complaint preferred by them.

iv. That the project of respondent no. 1 has been registered under the Act and the rules. Registration certificate granted by the Haryana Real Estate Regulatory Authority vide memo no. HRERA-140/2017/1083 dated 15.09.2017. That the respondent no. 1 had

applied for extension of the registration and the authority has already extended the validity of registration vide memo bearing no. RC/REP/HARERA/GGM/2017/208 dated 02.08.2019. The registration had been extended till 31.12.2019. However, the respondent no. 1 had already offered possession of the unit in question to the complainants vide letter dated 11.11.2019. Therefore, there is no delay in delivery of possession of the unit in question as alleged by the complainants. The complaint is devoid of any cause of action. The instant complaint is liable to be dismissed at the threshold.

- v. That clause 13 of the buyer's agreement further provides that no compensation for any delay in delivery of possession caused on account of delay or non-receipt of the occupation certificate, completion certificate or any other permission/sanction from the competent authority shall be provided to the allottees. Respondent no. 1 had submitted an application dated 28.01.2019 for grant of occupation certificate to the concerned statutory authority. The occupation certificate thereafter was granted on 17.10.2019. It is submitted that once an application for issuance of occupation certificate is submitted before the concerned competent authority the respondent no. 1 ceases to have any control over the same. The grant of occupation certificate is the prerogative of the concerned statutory authority and respondent no. 1 does not exercise any control over the matter. Therefore, the time period utilised by the concerned statutory authority for granting the occupation certificate needs to be necessarily excluded from the computation of the time period utilised in the implementation of the project in

terms of the buyer's agreement. As far as respondent no. 1 is concerned, it has diligently and sincerely pursued the development and completion of the project in question.

- vi. That the complainants were offered possession of the unit in question through letter of offer of possession dated 11.11.2019. The complainants were called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit in question to them. That it was clearly mentioned in the said Letter of Offer of Possession that *"in furtherance to the payment plan opted by you under the subvention scheme, we offer you the possession of the Unit for the limited purpose of carrying out fit-outs/interim possession.....at this stage, you may choose to take final possession of the Unit by remitting the balance sale consideration as per the Statement of Final dues (detailed in Annexure 1) and complete the documentation requirement as specified in Annexure 2, on or before 30 days from this letter date to enable us to initiate the process of handover of your Unit."* However, the complainants approached respondent no. 1 with request for payment of compensation for the alleged delay in utter disregard of the terms and conditions of the buyer's agreement. The respondent no. 1 explained to the complainants that the validity of registration has already been extended by the statutory authority and therefore they were/are not entitled to any compensation in terms of the buyer's agreement. Furthermore, respondent no. 1 transparently and fairly conveyed to the complainants that no compensation/interest is liable to be paid to them on account of the defaults committed by them in



performing their obligations and duties enumerated in the buyer's agreement. However, the complainants threatened respondent no. 1 with institution of unwarranted litigation. The instant complaint has been preferred by the complainants in order to obtain wrongful gain and cause wrongful loss to respondent no. 1.

vii. That the offer of possession dated 06.11.2019 issued by the respondent to the complainants is a matter of record. However, it is pertinent to mention that the complainants had intentionally refrained from obtaining possession of the unit in question. It is wrong and denied that there was any discrepancy in the balance amount to be paid by the complainants to the respondents or that the imaginary discrepancy can be construed as a justified reason for abstaining from obtaining possession of the unit by the complainants in the manner claimed in the corresponding paragraph of the complaint. It is submitted that discrepancy, if any, was on account of an inadvertent and typographical error and no prejudice/harm was caused to the complainants on account thereof. The letter of offer of possession dated 11.11.2019 is a matter of record. In any case, the allegations of the complainants are wholly inconsequential and irrelevant as no payments have been made on the basis of earlier letter of possession dated 06.11.2019.

viii. That the complainants wilfully refrained from obtaining possession of the unit in question. It is submitted that the complainants did not have adequate funds to remit the balance payments requisite for obtaining possession in terms of the buyer's agreement and

consequently in order to needlessly linger on the matter, the complainants refrained from obtaining possession of the unit in question. Therefore, there is no equity in favour of the complainants. It is also pertinent to note that the complainants did not complete the possession formalities till July 2020 and thereafter due to widespread of COVID 19 and lack of manpower, the handover was delayed till October 2020. That an offer for possession marks termination of the period of delay, if any. The complainants are not entitled to contend that the alleged period of delay continued even after receipt of offer for possession. The complainants have consciously and maliciously refrained from obtaining possession of the unit in question. Consequently, the complainants are liable for the consequences including holding charges, as enumerated in the buyer's agreement, for not obtaining possession.

- ix. That respondent no. 1 has credited an amount of Rs. 13,42,526/- under the subvention scheme to the account of the complainants. Furthermore, a total rebate of Rs. 12,78,160/- on account of GST has been credited by respondent no. 1 to the account of complainants. The complainants are not entitled to any amount in addition to the aforesaid sum. It is submitted that the complainants have accepted the aforesaid amount in full and final satisfaction of their grievances. The instant complaint is nothing but a gross misuse of process of law.
- x. That the complainants approached respondent no. 1 requesting it to deliver the possession of the unit in question and the same was

handed over vide interim handover document dated 09.10.2020. It is pertinent to note that the complainants had opted for a subvention scheme whereby the complainants had chosen to obtain interim possession of the unit in question while deferring the last instalment to be paid to respondent no. 1. It has been further provided therein that the complainants would be liable to immediately vacate the unit in question if they default in making payments to respondent no. 1 in accordance with the payment plan. The complainants had further agreed that if they default in making payments in accordance with the payment plan then they shall not be entitled to delayed possession charges. In the present matter, the complainants have consciously and intentionally refrained from making payment of the last instalment to respondent no. 1 and therefore, cannot be permitted to take advantage of their own illegal acts. The instant complaint is unsustainable both in law and on facts. The complainants have intentionally distorted the real and true facts in order to generate an impression that respondent no. 1 has reneged from its commitments. No cause of action has arisen or subsists in favour of the complainants to institute or prosecute the instant complaint.

- xi. That the respondents have been prevented from timely implementation of the project by reasons beyond its power and control. It is submitted that the respondents had appointed a contractor operating under the name and style of Capacite Infraprojects Ltd. for construction and implementation of the project in question. The said contractor had represented and claimed that it has the necessary resources, competence, capacity,

capability and expertise for undertaking, performing, effectuating and completing the work undertaken by it. The respondents had no reason to suspect the bona fide of the said contractor at the relevant time and awarded the work to the said contractor. However, the said contractor was not able to meet the agreed timeline for construction of the project. The said contractor failed to deploy adequate manpower, shortage of material, etc. The respondents were constrained to issue several notices, requests etc. to the said contractor to expedite progress of the work at the project site but to no avail. The said contractor consciously and deliberately chose to ignore the legitimate and just requests of the respondents on one pretext or the other and defaulted in carrying out the work in a time bound manner. Therefore, no fault or lapse can be attributed to the respondents of the facts and circumstances of the case.

- xii. That the complainants are intentionally misconstruing and misinterpreting the terms and conditions incorporated in the buyer's agreement in order to hoodwink this honourable authority. It has been categorically recorded in the buyer's agreement that the complainants have undertaken to "pay in advance, along with last instalment specified under Payment Plan, advance maintenance charges (AMC) equivalent to Maintenance Charges for the period of one year or as may be prescribed by the Company/Maintenance Agency at its discretion." Thus, the contentions of the complainants regarding their supposed grievance towards the demand of advance maintenance charges for 24 months are unsustainable both in law and on facts. It is wrong and denied that there was any occasion for the complainants to have addressed any email

regarding their so-called grievance towards the amount of advance maintenance charges for 24 months to the respondents. The contents of the said units are absolutely false and frivolous to their positive knowledge of the complainants. The legality/factual correctness of the emails referred to in the corresponding paragraph of the complaint is specifically denied. It is submitted that the emails have been dispatched by the complainants in order to collect false evidence to the prejudice of the respondents. It is wrong and denied that the complainants are not bound to pay the advance maintenance charges for 24 months as the same has been demanded by respondent no.1 in accordance with the terms and conditions incorporated in the buyer's agreement.

- xiii. That the purchasers in the project in question have defaulted in timely remittance of the instalments. It is submitted that when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially and further causes enormous business losses to the respondents. It is submitted that the respondents despite defaults of several allottees earnestly fulfilled its obligations under the buyer's agreement and completed the project as expeditiously as possible in the facts and circumstances of the case. The defaults committed by various allottees has delayed the contemplated implementation of the project. The respondents cannot be penalised for indiscipline of its customers. Therefore, no fault or lapse can be attributed to the respondents in the facts and circumstances of the case.

7. 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

8. The preliminary objections raised by the respondents regarding jurisdiction of the authority to entertain the present complaint stands rejected. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter jurisdiction

10. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act leaving aside compensation



which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondents

F.I Objection regarding exclusion of time taken by the competent authority in processing the application and issuance of occupation certificate

11. As far as contention of the respondent with respect to the exclusion of time taken by the competent authority in processing the application and issuance of occupation certificate is concerned, the authority observed that the respondent has applied for grant of occupation certificate on 11.02.2019 and thereafter vide memo no. ZP-845/AD(RA)/2019/25815 dated 17.10.2019, the occupation certificate has been granted by the competent authority under the prevailing law. The authority cannot be a silent spectator to the deficiency in the application submitted by the promoter for issuance of occupancy certificate. It is evident from the occupation certificate dated 17.10.2019 that an incomplete application for grant of OC was applied on 11.02.2019 as fire NOC from the competent authority was granted only on 30.05.2019 which is subsequent to the filing of application for occupation certificate. Also, the Chief Engineer-I, HSVP, Panchkula has submitted his requisite report in respect of the said project on 25.07.2019. The District Town Planner, Gurugram and Senior Town Planner, Gurugram has submitted requisite report about this project on 06.09.2019 and 07.09.2019 respectively. As such, the application

submitted on 11.02.2019 was incomplete and an incomplete application is no application in the eyes of law.

12. The application for issuance of occupancy certificate shall be moved in the prescribed forms and accompanied by the documents mentioned in sub-code 4.10.1 of the Haryana Building Code, 2017. As per sub-code 4.10.4 of the said Code, after receipt of application for grant of occupation certificate, the competent authority shall communicate in writing within 60 days, its decision for grant/ refusal of such permission for occupation of the building in Form BR-VII. In the present case, the respondent has completed its application for occupation certificate only on 07.09.2019 and consequently the concerned authority has granted occupation certificate on 17.10.2019. Therefore, in view of the deficiency in the said application dated 11.02.2019 and aforesaid reasons, no delay in granting occupation certificate can be attributed to the concerned statutory authority.

G. Findings of the authority

13. Relief sought by the complainants:

The claim can be abandoned or substituted or scaled down at any stage of the *lis*. No doubt, initially the complaint was filed by the complainants for grant of delay possession charges among other reliefs, but at the time of argument, learned counsel for the complainants had stated that he is not pressing reliefs other than delay possession charges and the said



complaint be considered for compliance of obligations by the promoter under proviso to section 18(1) keeping in view the fact that the promoter had failed to give possession by the due date as per agreement for sale. Thus, the complainants being *dominus litis* can choose to abandon the relief of operational charges & adjustment of delay possession charges towards outstanding demand as per letter dated 08.03.2021 and is claiming interest for delayed possession, which is clearly an exercise by the complainants in conformity and within the purview of Order XXIII rule 1(1) C.P.C. and is legally permissible.

14. In the present complaint, the complainants intend to continue with the project and are 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."

15. Clause 7(a) of the buyer's agreement dated 07.12.2018 provides time period for handing over the possession and the same is reproduced below:

"7. POSSESSION AND SALE DEED

(a) Within 60 (sixty) days from the date of issuance of Occupation Certificate by the concerned Authorities, the Company shall offer the possession of the unit to the Allottee. Subject to Force Majeure and fulfillment by the Allottee of all the terms and conditions of this Agreement including but

not limited to timely payment by the Allottee of the Total Price payable in accordance with Payment Plan Annexure-III, along with stamp duty, registration and incidental charges and other charges in connection thereto due and payable by the Allottee and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company shall offer the possession of the Unit to the Allottee on or before 31-12-2018 or such time as may be extended by the competent authority."

16. **Due date of handing over possession:** As per clause 7(a) of the buyer's agreement, the respondent was under obligation to offer the possession of the unit to the allottee on or before 31.12.2018 or such time as may be extended by the competent authority.
17. The counsel of the respondent submitted that the project in question is registered vide no. 208 of 2017 and the same was initially valid till 31.12.2018. However, due to unavoidable circumstances on account of delay by the contractor, the respondent was constrained to seek extension of registration and the same was extended till 31.12.2019. The occupation certificate was granted by the competent authority on 17.10.2019 and the possession was offered on 11.11.2019, therefore, there is no delay in offering possession in so far as respondent is concerned.
18. The authority is of the view that the promoter is obliged under proviso to section 3 of the Act to get the on-going project registered, for a certain time period, where the completion certificate has not been issued. At the time of filing application for registration, promoter must disclose the end date [under section 4(2)(I)(C)] within which he shall be able to



complete the development of the project. It is worthwhile to note that, as mentioned in the application, the development of the real estate project should be completed in all means within the stipulated end date but if the promoter fails to complete the development of the project within the end date then as per the terms of the Act, the promoter can apply for extension of the end date for a further period of 1 (one) year under section 6 of the Act. Furthermore, the extension of registration certificate is without prejudice to the rights of allottees as per proviso to section 18(1) of the Act regarding delay possession charges from the due date of possession till the actual handing over of possession.

19. In the light of the above, the promoter was under obligation to handover possession of the subject unit by 31.12.2018 as mentioned in the registration certificate and buyer's agreement. The respondent was unable to handover the possession as there was a delay in construction on part of the contractor. Since, the construction of the said project was not complete within the time frame as mentioned in the registration certificate consequently, the respondent applied for extension of registration. The arrangement between the contractor and the respondent w.r.t construction of the said project is an internal and an independent decision of the respondent and shall in no means hinder the rights of the allottees provided under section 18 of the Act. Therefore, it can be concluded that the due date of handing over possession is 31.12.2018 as mentioned in the registration certificate

and clause 7(a) of the buyer's agreement. In other words, the respondent was liable to handover possession by 31.12.2018 and the respondent has failed to handover possession by the due date.

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

21. The legislature in its wisdom in the subordinate legislation under 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. 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., 29.07.2021 is 7.30%. Accordingly, the prescribed rate of interest will be MCLR +2% i.e., 9.30%.

22. 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:

"(z) "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;"*

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

24. 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 7(a) of the buyer's agreement executed between the parties on 07.12.2018, possession of the booked unit was to be delivered on or before 31.12.2018. Occupation Certificate has been received by the respondent on 17.10.2019 and the possession of the subject unit was offered to the

complainants on 11.11.2019. Copies of the same have been placed on record. Vide email dated 31.07.2020, the respondent has admitted that *"The Unit would be tentatively ready for Physical Handover on 29.07.2020."* and thereafter vide email dated 08.10.2020, the respondent has intimated that *"The Unit is completely ready for handover and basis your request, the handover of the unit has been re-scheduled for 09-Oct-2020, Friday."* Thereafter, the complainants have taken possession on 09.10.2020. On the basis of above facts, the complainants are entitled to delayed possession charges till the date of handing over possession. 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 buyer's agreement dated 07.12.2018 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 07.12.2018 to hand over the possession within the stipulated period.

25. 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 delay possession at prescribed rate of interest i.e. 9.30% p.a. w.e.f. 31.12.2018 till 09.10.2020 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

H. Direction of the authority


26. 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 the 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. 31.12.2018 till 09.10.2020. 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 complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iii. The rate of interest chargeable from the complainants /allottees by the respondents, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondents 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.
- iv. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement. Moreover, holding charges shall not be charged by the promoter at any point of time


even after being part of agreement as per law settled by Hon'ble Supreme Court in civil appeal no. 3864-3889/2020.

27. Complaint stands disposed of.

28. File be consigned to registry.


(Samir Kumar)

Member

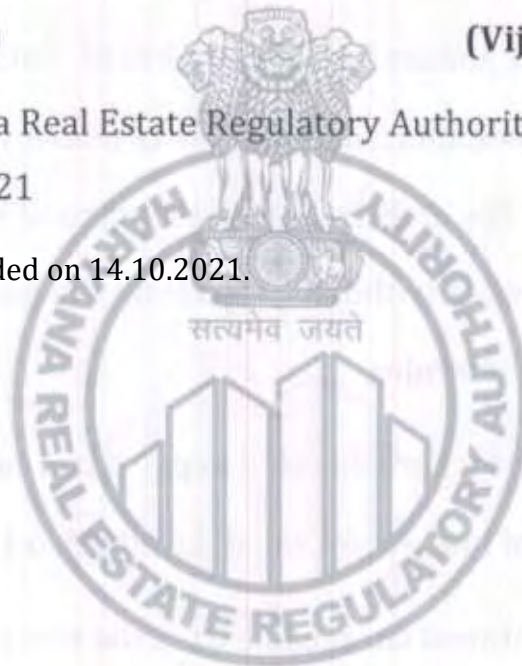

(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 29.07.2021

Judgement uploaded on 14.10.2021.



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