

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

Complaint no. : 4045 of 2020
First date of hearing : 05.01.2021
Date of decision : 12.08.2021

Rohitashva Swaroop
R/o: Flat No. L - 1106, Palm Drive Apartments,
Sector - 66, Gurugram - 122018.

Complainant

Versus

M/s Emaar MGF Land Ltd.
Address: 306-308, 3rd floor, Square One, C2,
District Centre, Saket, New Delhi -110017.

Respondent

CORAM:

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

**Chairman
Member
Member**

APPEARANCE:

Shri Sukhbir Yadav
Shri J.K. Dang along with Shri Ishaan Dang

Advocate for the complainant
Advocates for the respondent

HARERA
ORDER

1. The present complaint dated 16.11.2020 has been filed by the complainant/allottee in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all

obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter se them.

2. Since, the buyer's agreement has been executed on 13.05.2010 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 promoter/respondent in terms of section 34(f) of the Act *ibid*.

A. Project and unit related details

3. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	"Emerald Estate Apartments at Emerald Estate" in Sector 65, Gurugram, Haryana.
2.	Project area	25.499 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	06 of 2008 dated 17.01.2008 Valid/renewed up to 16.01.2025
5.	Name of licensee	Active Promoters Pvt. Ltd. and 2 others C/o Emaar MGF Land Ltd.
6.	HRERA registered/ not registered	"Emerald Estate" registered vide no. 104 of 2017 dated 24.08.2017 for 82768 sq. mtrs.
	HRERA registration valid up to	23.08.2022



7.	Occupation certificate granted on	11.11.2020 [Page 124 of reply]
8.	Provisional allotment letter dated	09.04.2010 [Page 34 of reply]
9.	Unit no.	EEA-G-F09-04, 9 th floor, building no. G [Page 49 of complaint]
10.	Unit measuring	1395 sq. ft.
11.	Date of execution of buyer's agreement	13.05.2010 [Page 47 of complaint]
12.	Payment plan	Construction linked payment plan [Page 82 of complaint]
13.	Total consideration as per statement of account dated 30.12.2020 at page 97 of the reply	Rs.59,61,621/-
14.	Total amount paid by the complainant as per statement of account dated 30.12.2020 at page 98 of reply	Rs.61,00,747 /-
15.	Date of start of construction as per statement of account dated 30.12.2020 at page 97 of the reply	26.08.2010
16.	Due date of delivery of possession as per clause 11(a) of the said agreement i.e. 36 months from the date of commencement of construction (26.08.2010) + grace period of 6 months, for applying and obtaining completion certificate/ occupation certificate in respect of the unit and/or the project. [Page 62 of complaint]	26.08.2013 [Note: Grace period is not included]
17.	Date of offer of possession to the complainant	22.11.2020 [Page 100 of reply]
18.	Delay in handing over possession till 22.01.2021 i.e. date of offer of possession (22.11.2020) + 2 months	7 years 4 months 27 days

B. Facts of the complaint

4. The complainant has made the following submissions in the complaint:
- i. That in August 2009, Mr. Rohitashva Swaroop (the complainant) received a marketing call from the office of the respondent (Emaar MGF Land Ltd.). The caller represented himself as Sales Manager of the respondent company and marketed the residential project by name and style "Emerald Estate" situated at Sector 65, Gurugram. The complainant visited the sales office of the respondent and consulted with the marketing staff of the respondent. The marketing staff of the respondent showed a rosy picture of the project and allured with proposed specifications and assured for the timely delivery of the flat. The marketing staff of the respondent gave a brochure of the project and a pre-printed application form and assured that possession of the flat will be delivered with 36 months from the date of the construction as per specification shown in the brochure. The relevant portion of clause no. 20 of the application form is reproduced here for reference "The Company shall make all efforts to handover the possession of the Unit on expiry of 36 months from the date of construction, subject to certain limitations as provided in the Buyer's Agreement and the timely compliance of the provisions of the Buyer's Agreement by the Applicants(s)."
 - ii. That on 12.08.2009, being relied on the representation and assurance of the respondent, the complainant booked an apartment,

bearing no. M – F1204, in the project “**Emerald Estate**”, Sector 65, Gurugram, and issued a cheque of Rs. 5,00,000/- for booking amount. The apartment was purchased under the construction link payment plan for a basic sale consideration of Rs. 44,62,605/-.

iii. That on 29.09.2009, the respondent issued a provisional allotment letter for apartment no. EEA-M-F12-04, in the said project in favour of allottee. On 25.03.2010, the respondent called the complainant and informed that due to a change in the plans, they are changing the allotted unit. Thereafter, the complainant gave a letter to the respondent to allot the flat in tower – G of the project. On 09.04.2010, the respondent issued another provisional allotment letter for the new apartment no. EEA-G-F09-04, in the said project in favour of allottee.

iv. That on 13.05.2010, a pre-printed, arbitrary, unilateral buyer agreement was executed between respondent and allottee on 13.05.2010. As per clause no. 11(a) of buyer’s agreement, the respondent has to give the possession of apartment “within 36 months from the date of commencement of construction and development of the unit”. As per buyer’s agreement, the respondent is also entitled to a grace period of 6 months. The Construction work on-site was commenced on 26.08.2010. Therefore, the due date of possession was 26.08.2013.

- v. That there the complainant continued to pay the demands as per payment schedule, as and when raised by the respondent. On 05.11.2020, the respondent sent a statement of account, which shows complainant had paid Rs. 55,76,651/- against the total cost of apartment Rs. 55,13,005/-.
- vi. That the main grievance of the complainant in the present complaint is that despite the complainant being paid more than 100% of the actual amounts of apartment, but the respondent party has failed to deliver the possession of fully constructed and developed apartment. The facts and circumstances as enumerated above would lead to the only conclusion that there is a deficiency of service on the part of the respondent party and as such, they are liable to be punished and compensate the complainant.
- vii. That for the first time, cause of action for the present complaint arose in May 2010, when the buyer's agreement containing unfair and unreasonable terms was, for the first time, forced upon the allottees. Thereafter cause of action arose in May 2013 when the respondent party failed to handover the possession of the apartment as per the buyer's agreement. Further, the cause of action again arose on various occasions including on a) July 2014; b) Jan. 2015; c) June 2016, d) October 2017; e) December 2018, f), August 2019, g), November 2020 and on many time till date, when the protests were lodged with the respondent party about its failure to deliver

the project and the assurances were given by them that the possession would be delivered by a certain time. The cause of action is alive and continuing and will continue to subsist till such time as this hon'ble authority restrains the respondent party by an order of injunction and/or passes the necessary orders.

C. Relief sought by the complainant

5. The complainant has filed the present compliant for seeking following reliefs:

- i. Direct the respondent to refrain to give effect to unfair, unilateral, arbitrary and one-sided clauses of the buyer's agreement i.e. unreasonable demand and compensation on delayed possession.
- ii. Direct the respondent to pay interest at the prescribed rate under section 18 of the Act, on the amount paid by the complainant to the respondent as instalments towards the purchase of apartment from the due date of possession till lawful offer of possession (complete in all respect without any preconditions).
- iii. Any other relief/ direction which this authority deems fit and proper considering the facts and circumstances of the present complaint.

6. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act and to plead guilty or not to plead guilty.

D. Reply by the respondent

7. The respondent has raised certain preliminary objections and has contested the present complaint on the following grounds:

- i. That the complainant has filed the present complaint seeking, inter alia, interest and compensation for alleged delay in delivering possession of the apartment purchased by the complainant. It is respectfully submitted that such complaints are to be decided by the adjudicating officer under section 71 of 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 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 13.05.2010. That the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. The provisions of the Act relied upon by the complainant for seeking interest cannot be called in to aid in derogation and in negation of the provisions of the buyer's agreement. The complainant cannot claim any relief which is not contemplated under the provisions of the buyer's agreement. The complainant cannot demand any interest or compensation beyond or contrary to the agreed terms and conditions between the parties.

- iii. That initially, apartment bearing no. EEA-M-F12-04 was provisionally allotted to the complainant vide provisional allotment letter dated 29.09.2009 in favour of the complainant. Thereafter, on account of change in layout plan, a new unit bearing no. EEA-G-F09-04 (hereinafter referred to as "said unit") was allotted to the complainant vide provisional allotment letter dated 09.04.2010. Thereafter, the buyer's agreement dated 13.05.2010 was executed between the complainant and the respondent.
- iv. That the contractual relationship between the parties is governed by the terms and conditions of the buyer's agreement executed by the parties. Clause 11 of the buyer's agreement provides that subject to force majeure conditions and delay caused on account of reasons beyond the control of the respondent, and subject to the allottee not being in default of any of the terms and conditions of the same, the respondent expects to deliver possession of the apartment within a period of 36 months from the date of commencement of construction and development of the unit (26.08.2010) plus a grace period of 6 months.
- v. That, furthermore, it had also been contained in the aforesaid buyer's agreement that in the case of delay by the allottee in making payment or delay on account of reasons beyond the control of the respondent, the time for delivery of possession stands extended automatically. In the present case, the complainant had defaulted in

making timely payment of sale consideration as per the payment plan and consequently is not entitled to any compensation for delay under clause 13(c) of the buyer's agreement. Due to persistent and numerous defaults in making timely payment of sale consideration, the complainant is not entitled to any compensation under the buyer's agreement. Moreover, the time period for delivery of possession also stands automatically extended in accordance with clause 11(b)(iv) of the buyer's agreement, till payment of all outstanding amounts to the satisfaction of the respondent. From the very beginning, the complainant had defaulted in timely payment of instalments as per the payment plan. The respondent was constrained to issue various reminder letters. It would not be out of place to mention that the respondent has already credited an amount of Rs.5,22,380/- into the account of the complainant towards compensation, which has been duly accepted by the complainant. The complainant is estopped from claiming any more compensation or interest from the respondent.

- vi. That, meanwhile, the respondent had registered the project under the Act. The registration certificate dated 24.08.2017 was granted to the respondent, registering the project upto 23.08.2022. The respondent completed construction and applied on 16.07.2020 in furtherance of application dated 17.03.2020 for issuance of the occupation certificate. The occupation certificate vide memo bearing

no. ZP-441-Vol.II/AD(RA)/2020/20094 dated 11.11.2020 was issued by the competent authority. The respondent has thereafter offered possession of the apartment to the complainant on 22.11.2020.

- vii. That the project got delayed on account of various reasons which were/are beyond the power and control of the respondent and hence the respondent cannot be held responsible for the same. *Firstly*, the respondent was constrained to terminating the contract with one of the contractors of the project which has also contributed to delay in construction activities at the site. The contractor was unable to meet the agreed timelines for construction of the project. After termination of the contract, the respondent had filed petition before the Hon'ble High Court seeking interim protection against the contractor. Similar petition was also filed by the contractor against the respondent. The Hon'ble High Court appointed Justice A.P. Shah (Retd.) as sole arbitrator for adjudication of dispute between the respondent and contractor. The Hon'ble Arbitrator vide order dated 27.04.2019 gave liberty to the respondent to appoint another contractor w.e.f. 15.05.2019. The respondent had been diligently pursuing the matter with the contractor before the sole arbitrator and no fault can be attributed to the respondent in this regard and the respondent cannot be held responsible for the same. *Secondly*, in the meanwhile, the National Building Code (NBC) was revised in the

year 2016 and in terms of the same, all high-rise buildings (i.e buildings having height of 15 mtrs and above), irrespective of the area of each floor, are now required to have two staircases. Furthermore, it was notified vide Gazette published on 15.03.2017 that the provisions of NBC 2016 supersede provisions of NBC 2005. The respondent had accordingly sent representations to various authorities identifying the problems in constructing a second staircase. Eventually, so as to not cause any further delay in the project and so as to avoid jeopardising the safety of the occupants of the buildings in question, the respondent had taken a decision to go ahead and construct the second staircase. However, due to the impending BL Kashyap (contractor) issue of non-performance, the construction of the second staircase could not be started as well.

viii. That several allottees, including the complainant, have defaulted in timely remittance of payment of installments which was an essential, crucial and an indispensable requirement for conceptualization and development of the project in question. Furthermore, 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 whereas enormous business losses befall upon the respondent. The respondent, despite default of several allottees, has diligently and earnestly pursued the development of the project in

question and has constructed the project in question as expeditiously as possible. Therefore, there is no default or lapse on the part of the respondent and there is no equity in favour of the complainant.

8. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.

E. Jurisdiction of the authority

9. The preliminary objections raised by the respondent 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

10. 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

11. 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 respondent

F.I Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act

12. The respondent contended that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The respondent further submitted that the provisions of the Act are not retrospective in nature and the provisions of the Act cannot undo or modify the terms of buyer's agreement duly executed prior to coming into effect of the Act.
13. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force

of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)** which provides as under:

- "119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.....
122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

14. Also, in appeal no. 173 of 2019 titled as **Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

- "34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

15. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the buyer's agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of the Act and are not unreasonable or exorbitant in nature.

G. Findings on the reliefs sought by the complainant

G.I Delay possession charges

16. In the present complaint, the complainant 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."

17. Clause 11(a) of the buyer's agreement provides for time period for handing over of possession and is reproduced below:



"11. POSSESSION

(a) Time of handing over the possession

Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 36 months from the date of commencement of construction and development of the Unit. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of six months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project."

18. 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 the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment time period for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is 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.

19. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 36 (thirty-six) months from the date of commencement of construction and further provided in agreement that promoter shall be entitled to a grace period of 6 months for applying and obtaining completion certificate/occupation certificate in respect of said unit. The date of start of construction is 26.08.2010 as per statement of account dated 30.12.2020. The period of 36 months expired on 26.08.2013. As a matter of fact, the promoter has not applied to the concerned authority for obtaining completion certificate/ occupation certificate within the grace period prescribed by the promoter in the buyer's agreement. As per the settled law one cannot be allowed to take advantage of his own wrong. Accordingly, this grace period of 6 months cannot be allowed to the promoter at this stage.
20. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is 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 the 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.
22. Taking the case from another angle, the complainant-allottee was entitled to the delayed possession charges/interest only at the rate of Rs.5/- per sq. ft. per month as per clause 13(a) of the buyer's agreement for the period of such delay; whereas, as per clause 1.2(c) of the buyer's agreement, the promoter was entitled to interest @ 24% per annum at the time of every succeeding instalment for the delayed payments. The functions of the authority 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 authority 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 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.

23. 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., 12.08.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
24. 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;"

25. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
26. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, 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 11(a) of the buyer's agreement executed between the parties on 13.05.2010, possession of the said unit was to be delivered within a period of 36 months from the date of start of construction i.e. 26.08.2010. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 26.08.2013. In the present case, the complainant was offered possession by the respondent on 22.11.2020. 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 complainant as per the terms and conditions of the buyer's agreement dated 13.05.2010 executed between the parties.

27. 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 11.11.2020. However, the respondent offered the possession of the unit in question to the complainant only on 22.11.2020, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, he should be given 2 months' time from the date of offer of possession. These 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has 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. 26.08.2013 till the expiry of 2 months from the date of offer of possession (22.11.2020) which comes out to be 22.01.2021.

28. 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 complainant is entitled to delay possession charges at prescribed rate of the interest @ 9.30 % p.a. w.e.f. 26.08.2013



till 22.01.2021 as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

29. Also, the amount of Rs.5,22,380/- (as per statement of account dated 30.12.2020) so paid by the respondent to the complainant towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.

H. Directions of the authority

30. 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 complainant from due date of possession i.e. 26.08.2013 till 22.01.2021 i.e. expiry of 2 months from the date of offer of possession (22.11.2020). The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.
- ii. Also, the amount of Rs.5,22,380/- so paid by the respondent to the complainant towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges

to be paid by the respondent in terms of proviso to section 18(1) of the Act.


iii. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement. The respondent is also not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of the builder buyer's agreement as per law settled by hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

31. Complaint stands disposed of.

32. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Samir Kumar)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.08.2021

Judgement uploaded on 13.10.2021