

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

**Complaint no. : 4457 of 2020**  
**First date of hearing : 14.01.2021**  
**Date of decision : 22.07.2021**

1. Sandeep Fogaat  
2. Neeru Fogaat  
Both RR/o: Tower-18, 601, Emaar Gurgaon Greens,  
Sector-102, Gurugram, Haryana.

**Complainants**

Versus

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

**Respondent**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Vijay Kumar Goyal

**Chairman  
Member**

**APPEARANCE:**

Shri Puneet Nahar  
Shri J.K. Dang

Advocate for the complainants  
Advocate for the respondent

**ORDER**

1. The present complaint dated 24.12.2020 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	Gurgaon Greens, Sector 102, Gurugram.
2.	Project area	13.531 acres
3.	Nature of the project सत्यमेव जयते	Group housing colony
4.	DTCP license no. and validity status	75 of 2012 dated 31.07.2012 Valid/renewed up to 30.07.2020
5.	Name of licensee	Kamdhenu Projects Pvt. Ltd. and another C/o Emaar MGF Land Ltd.
6.	HRERA registered/ not registered	<b>Registered vide no. 36(a) of 2017 dated 05.12.2017 for 95829.92 sq. mtrs.</b>
	HRERA registration valid up to	<b>31.12.2018</b>
7.	HRERA extension of registration vide	<b>01 of 2019 dated 02.08.2019</b>
	Extension valid up to	<b>31.12.2019</b>
8.	Occupation certificate granted on	05.12.2018 [Page 103 of reply]
9.	Provisional allotment letter dated	23.11.2018 [Page 39 of reply]
10.	Unit no.	GGN-18-0601, 6 <sup>th</sup> floor, tower 18 [Page 62 of complaint]
11.	Unit measuring (super area)	1650 sq. ft.



12.	Date of execution of buyer's agreement	30.01.2019 [Page 54 of complaint]
13.	Payment plan	Linked stages payment plan [Page 101 of complaint]
14.	Total consideration as per statement of account dated 29.06.2021 at page 97 of the reply	Rs.1,11,46,761/-
15.	Total amount paid by the complainants as per statement of account dated 29.06.2021 at page 128 of reply	Rs.1,11,32,261/-
16.	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 70 of complaint]	31.12.2018
17.	<b>Date of offer of possession to the complainants</b>	<b>24.05.2019</b> [Page 106 of complaint]
18.	Complainant took possession of the said unit on	03.07.2019 [As admitted by respondent at page 10 of reply]
19.	Delay in handing over possession till 03.07.2019 i.e. date of handing over of possession	6 months 3 days

### B. Facts of the complaint

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

- i. That the complainants booked a 3BHK flat on 6<sup>th</sup> floor unit no. T18-601 admeasuring 1650 sq. ft. of super area and the carpet area of 1022.58 sq. ft. along with 1 parking space for sale consideration of Rs.1,11,30,100/- on 26.10.2018 in the project in question and in lieu

of the same, the complainant has paid a sum of Rs. 1,00,000/- to the respondent as a booking amount. The brochure issued by the respondent said that "PAY 15% & MOVE IN". Though as per the buyer's agreement, the possession date of the said apartment was on or before 31<sup>st</sup> December 2018 but the respondent gave the possession of the said unit to the complainant on dated 03<sup>rd</sup> July, 2019 which is 7 months delay in possession.

- ii. That the salesperson of the respondent assured that the complainant need not visit India for signing the buyer's agreement as one of them is working for an IT company in Riyadh (Saudi Arabia). But later on, they asked the complainants' to visit India for the same. Thereafter, they asked the respondent to do the same with the Special Power of Attorney and the respondent agreed for the same. The complainant sent a Special Power of Attorney after attesting the same from Indian Embassy Riyadh but the respondent took more than 2 months to get it registered. The respondent misguided the complainants' at every single step. The respondent handed over the possession of the said unit to the complainants with a delay of 7 months. Now the complainants are seeking delayed possession interest of the said unit from the respondent.

**C. Relief sought by the complainants**

4. The complainants have filed the present compliant for seeking following relief:



- i. Direct the respondent to pay delay interest charges from the given date of possession i.e. 31.12.2018 till the date of actual possession which is 03.07.2019.
  - ii. Refrain the respondent party to give effect to the to the unfair clauses unilaterally incorporated in the buyer's agreement.
  - iii. Any other relief/order or direction which this authority deems fit and proper considering the facts and circumstances of the present complaint.
5. 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**

6. The respondent has raised certain preliminary objections and has contested the present complaint on the following grounds:
- i. That the complainants have filed the present complaint seeking interest and compensation for alleged delay in delivering possession of the apartment booked by them. 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 30.01.2019.
- iii. That the complainants were allotted apartment no. GGN-18-0601 vide provisional allotment letter dated 23.11.2018. The complainants had opted for construction linked payment plan. Thereafter, the buyer's agreement was executed between the complainants and the respondent on 30.01.2019.
- iv. That the complainants had opted for a payment plan in which payment was required to be made in three instalments. The first instalment was payable upon booking, the second instalment within 30 days from the issuance of the allotment letter and buyer's agreement and the final instalment upon intimation of possession or 01<sup>st</sup> March 2018, whichever was earlier. Although the complainants had agreed and undertaken to make timely payments in accordance with the payment schedule, but they were irregular in payment of instalments. The respondent issued notices for payment and reminders and the statement of account reflects the payments made by the complainants as well as the delayed payment interest as on 29.06.2021.
- v. That the respondent registered the project under the provisions of the Act. The project had been initially registered till 31.12.2018.



Subsequently, the registration of the project was extended uptill 31.12.2019. In the meanwhile, the respondent completed construction of the tower in which the apartment in question is situated and applied for the occupation certificate in respect thereon on 13.04.2018. The occupation certificate was issued by the competent authority on 05.12.2018.

- vi. That upon receipt of the occupation certificate, the respondent offered possession of the apartment in question to the complainants vide letter dated 24.05.2019. The complainants were given an option to either pay the entire balance sale consideration as per the buyer's agreement including the stamp duty, registration charges and other amounts payable as per the buyer's agreement and complete the documentation and formalities to enable the respondent to hand over possession of the unit to the complainants. Alternatively, the complainants were offered interim possession of the apartment for fit outs. The complainants opted to take interim possession of the unit. The undertaking was executed by the attorney of the complainants on 06.06.2019.
- vii. That the contractual relationship between the complainants and the respondent is governed by the terms and conditions of the buyer's agreement dated 30.01.2019. Clause 7 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 60 days from the date of issuance of the occupation certificate by the competent authority, subject to, *inter alia*, the allottees having fulfilled all the terms and conditions of the buyer's agreement, including but not limited to timely payment of the total price payable as per the payment plan, along with the stamp duty, registration and incidental and other charges and subject to the allottees having complied with all the formalities or documentation, possession was proposed to be offered to the allottees on or before 31.12.2018 or such time as may be extended by the competent authority.

viii. That at the time of execution of the buyer's agreement, the project had been initially registered till 31.12.2018. Consequently, it was mentioned in the buyer's agreement that possession shall be offered to the allottees on or before 31.12.2018 or by such time as may be extended by the competent authority. Subsequently, the registration of the project was extended uptill 31.12.2019. Consequently, the respondent became obliged to offer possession to the complainants on or before 31.12.2019. The respondent offered possession on 24.05.2019 i.e. well before the due date of possession i.e. 31.12.2019. Consequently, there is no default or lapse in so far as the respondent is concerned. Moreover, without prejudice to the submissions of the



respondent that there has been no delay in offering possession in accordance with the buyer's agreement, it is submitted that the complainants failed to exercise any option under clause 7(b) of the buyer's agreement on or before 31.12.2018 and have consequently acquiesced to extension of time for delivery of possession.

- ix. That, furthermore, the construction of the unit already stood completed and the occupation certificate in respect thereof was issued even before the execution of the buyer's agreement by the parties. However, since, as per the payment plan availed by the complainants, they have not made the complete payment towards the unit as per the buyer's agreement, complete possession of the unit has not been given to them. In fact, despite being offered the option to take complete possession, the complainants chose not to take proper possession after payment of complete sale consideration but have chosen to take interim possession of the unit. There is no default or lapse in so far as the respondent is concerned. An amount of Rs. 6,26,847/- remains to be paid by the complainants which includes outstanding principal dues, holding charges, common area maintenance (CAM) charges, stamp duty and e challan amount.
- x. That the respondent has duly completed construction of the apartment in question and has also offered possession of the same within the period of extended registration under the Act, well within

the agreed timelines as provided under the buyer's agreement.

There is no default or lapse on the part of the respondent.

xi. That the interest for the alleged delay demanded by the complainants is beyond the scope of the buyer's agreement. The complainants cannot demand any interest or compensation beyond or contrary to the agreed terms and conditions between the parties.

That no illegality can be attributed to the respondent. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

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 respondent regarding jurisdiction of the authority to entertain the present complaint stands rejected. The authority observes 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 relief sought by the complainants**

##### **F.I Delay possession charges**

11. **Relief sought by the complainants:** Direct the respondent to pay delay interest charges from the given date of possession i.e. 31.12.2018 till the date of actual possession which is 03.07.2019.
12. 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."*



13. Clause 7(a) of the buyer's agreement provides for time period for handing over of possession and 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 fulfilment 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."*

14. **Due date of handing over possession:** As per clause 7(a) of the buyer's agreement, the respondent was under an obligation to offer the possession of the unit to the allottees on or before 31.12.2018 or such time as may be extended by the competent authority.
15. The counsel of the respondent submitted that at the time of execution of the buyer's agreement, the project had been initially registered till 31.12.2018. Consequently, it was mentioned in the Buyer's Agreement that possession shall be offered to the allottees on or before 31.12.2018 or by such time as may be extended by the competent authority. Subsequently, the registration of the project was extended uptill 31.12.2019. Consequently, the respondent became obliged to offer possession to the complainants on or before 31.12.2019. The respondent offered possession on 24.05.2019, i.e. well before the due date of possession i.e. 31.12.2019. Consequently, there is no default or lapse in so far as the respondent is concerned.



16. 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)(l)(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 section 6 of the Act, the promoter can apply for extension of the end date for a further period of 1 (one) year. 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.
17. In the light of the above clause, the promoter was under an obligation to handover possession of the subject unit by 31.12.2018 as mentioned in the registration certificate and buyer's agreement. Therefore, it can be concluded that the due date of handing over possession was 31.12.2018 as mentioned in the registration certificate and clause 7(a) of the buyer's agreement. In other words, the respondent was required to handover possession by 31.12.2018 and the respondent has failed to handover possession by the due date.



18. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

**Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]**

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

19. 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.
20. 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., 22.07.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
21. **Rate of interest to be paid by complainants for delay in making payments:** The respondent contended that the complainants have



defaulted in making timely payments of the instalments as per the payment plan, therefore, they are liable to pay interest on the outstanding payments.

22. The authority observes that 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;"*

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

24. 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. The unit in question was allotted in favour of



the complainants vide provisional allotment letter dated 23.11.2018. The complainants being out of country, the buyer's agreement was executed through their attorney on 30.01.2019. By virtue of clause 7(a) of the buyer's agreement executed between the parties on 30.01.2019, possession of the said unit was to be delivered by 31.12.2018. The occupation certificate has been received by the respondent on 05.12.2018 and the possession of the subject unit was offered to the complainants on 24.05.2019. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 30.01.2019 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 30.01.2019 to hand over the possession within the stipulated period.

25. 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 05.12.2018. However, the respondent offered the possession of the unit in question to the complainants only on 24.05.2019. So, it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in terms of clause 19(10) of the Act, the



complainants were obligated to take possession by 24.07.2019 (Offer of possession plus 2 months). However, the complainants have taken possession of the unit in question on 03.07.2019 and this fact has been admitted by the respondent. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 31.12.2018 till the date of handing over of possession by the respondent i.e. 03.07.2019.

26. 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 charges at prescribed rate of the interest @ 9.30 % p.a. w.e.f. 31.12.2018 till 03.07.2019 as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

**G. Directions of the authority**

27. 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 the date of handing over of possession i.e. 03.07.2019. The arrears

of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per rule 16(2) of the rules.

- ii. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement. The respondent is also not entitled to claim holding charges from the complainants/allottees 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. 3864-3899/2020 decided on 14.12.2020.

28. Complaint stands disposed of.

29. File be consigned to registry.

  
**(Vijay Kumar Goyal)**  
Member  
Haryana Real Estate Regulatory Authority, Gurugram

  
**(Dr. K.K. Khandelwal)**  
Chairman  
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.07.2021

Judgement uploaded on 26.10.2021.