

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

Complaint no. : 3827 of 2020
First date of hearing : 09.12.2020
Date of decision : 26.08.2021

1. Rahul Ohlyan
 2. Santosh Devi
- Both RR/o: Sayad Wali Gali, ward no.10, Mahajan
Mohalla, Sampla, Rohtak, Haryana-124501.

Complainants

Versus

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

Respondent

CORAM:

Shri Samir Kumar
Shri Vijay Kumar Goyal

**Member
Member**

APPEARANCE:

Shri Gaurav Rawat
Shri J.K. Dang along with Shri Ishaan Dang

Advocate for the complainants
Advocates for the respondent

ORDER

1. The present complaint dated 03.11.2020 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	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	Registered vide no. 36(a) of 2017 dated 05.12.2017 for 95829.92 sq. mtrs.
	HRERA registration valid up to	31.12.2018
7.	HRERA extension of registration vide	01 of 2019 dated 02.08.2019
	Extension valid up to	31.12.2019
8.	Occupation certificate granted on	05.12.2018 [Page 133 of reply]
9.	Unit no.	GGN-06-1401, 14 th floor, tower 6 [Page 76 of complaint]
10.	Unit measuring	1650 sq. ft. (super area) 1022.58 sq. ft. (carpet area)
11.	Date of execution of buyer's agreement	30.01.2019 [Page 68 of complaint]
12.	Payment plan	Linked stages payment plan [Page 115 of complaint]

13.	Total consideration as per statement of account dated 09.02.2021 [Page 129 of reply]	Rs. 1,12,10,360/-
14.	Total amount paid by the complainants as per statement of account dated 09.02.2021 [Page 129 of reply]	Rs.1,02,82,408/-
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 84 of complaint]	31.12.2018
16.	Date of offer of possession to the complainants	12.08.2020 [Page 124 of complaint]
17.	Delay in handing over possession till 12.10.2020 i.e. date of offer of possession (12.08.2020) + 2 months	1 year 9 months 12 days

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
 - i. That the complainants booked a residential unit in the said project. The total consideration of the unit admeasuring approx.1022.58 sq. ft. carpet area, balcony area 163.51 sq. ft. and super area admeasuring 1650 sq. ft., being Rs. 99,35,050.00 and the payment of same was to made as per the payment plan. The complainants paid Rs.1,00,000.00 as booking amount dated 19.11.2018 and 20.11.2018.

- ii. That the complainants were allotted unit no. GGN-06-1401,14th floor, tower no. 06, in Sector 102. The respondent collected approx. Rs.1,02,82,408/- against the total sale consideration as per payment plan. The buyers, despite of having paid around more than 95% of the payment against the total consideration amount, has been offered possession without completing our flat as promised at the time of booking, even the complainants not being allowed to inspect the allotted unit till date nor had been paid full compensation till date.
- iii. That the complainants are the first purchaser of the flat and had entered into the buyer's agreement on 31.01.2019. Furthermore, it was contested by the complainants at the time of signing the agreement that at the time of booking it was alleged by the respondent company that the possession of the unit will be delivery on or before 31.12.2018, to which respondent company responded that it is just the formality you are required to sign and the subject unit is ready and the same will be deliver to the complainants within 20 days from the signing of the agreement, based on such false assurance by the respondent company, complainants signed the same.
- iv. That as per clause 7 of the buyer's agreement the respondent had to deliver the possession on or before 31.12.2018. Therefore, the due date of possession comes out to be 31.12.2018. The payment plan

was designed in such a way to extract maximum payment from the buyers. The complainants approached the respondent and asked about the status of construction and also raised objections towards non-completion of the project. It is pertinent to state herein that such arbitrary and illegal practices have been prevalent amongst builders, wherein the payment/demands/ etc. have not been transparent and demands were being raised without sufficient justifications and maximum payment was extracted just raising structure leaving all amenities/finishing/facilities/common area/road and other things promised in the brochure.

- v. That during the period the complainants went to the office of respondent several times and requested them to allow them to visit the site but it was never allowed saying that they do not permit any buyer to visit the site during construction period, once complainants visited the site but was not allowed to enter the site. The complainants even after paying amounts still received nothing in return but only loss of the time and money invested by them.
- vi. That after a delay of almost 1.5 years from the promised date of delivery of the possession along with the above said letter of possession dated 12.08.2020, the respondent raised illegal demand for Rs. 14,96,332 on various accounts. That at the time of booking the agreed total sale consideration of the unit was of Rs. 99,35,050/- and the same was acknowledged by the respondent company vide

email dated 19.11.2018 and also in the payment plan annexed along with the buyer's agreement dated 31.01.219.

- vii. That along with abovesaid offer of possession letter dated 12.08.2020, the respondent unilaterally increased the price of unit from Rs.99,35,050/- to Rs.1,12,10,360/-. Furthermore, the respondent raised an illegal demand of Rs.1,44,540/- on account of advance monthly maintenance charges @ Rs.3.65 per sf. ft. + GST @18% for 24 months and the same was never the part of payment plan. That at the time of booking, the complainants were assured that the respondent will be providing maintenance benefit of Rs.1,50,000/- and the same will be adjusted in the last instalment. Thereafter, after receiving the above said possession letter the complainants contacted the respondent company and raised the concern for the above said illegal demand but the respondent was never able to give any satisfactory response to the complainants regarding the above said illegal demand and were never definite about the delivery of the possession.
- viii. That such clauses of buyer's agreement are totally unjust, arbitrary and amounts to unfair trade practice as held by the Hon'ble NCDRC in the case titled as *Shri Satish Kumar Pandey & Anr. v/s M.s Unitech Ltd. (14.07.2015)* as also in the judgment of Hon'ble Supreme Court in *Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and ors. (W.P 2737 of 2017)*.

ix. That the complainants being aggrieved person filed the present complaint under section 31 of the Act with the Authority for violation/ contravention of provisions of this Act. As per section 18 of the Act. The promoter is liable to pay delay possession charges to the allottees of a unit, building or project for delay or failure in handing over of such possession as per the terms and agreement of the sale.

C. Relief sought by the complainants

4. The complainants have filed the present complaint for seeking following relief:
- i. Direct the respondent to handover the possession of the said unit with all amenities and specification as promised without any further delay.
 - ii. Direct the respondent to pay the interest on the total amount paid by the complainants at the prescribed rate of interest as per the Act from due date of possession till date of actual physical hand over the unit.
 - iii. To quash the illegal demand of Rs.1,44,540/- on account of advance maintenance charges @ Rs.3.65/- per sq. ft. + GST @18% for 24 months as the same were never part of the buyer's agreement.
 - iv. Direct the respondent not to force the complainant to sign any indemnity-cum-undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.

v. Pass such other order or further order(s), which this hon'ble authority may deem fit and proper in the facts and circumstances of the present case.

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 refund of several amounts and interest for alleged delay in delivering possession of the apartment booked by the complainants. 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. Moreover, the adjudicating officer derives his jurisdiction from the central act which cannot be negated by the rules made thereunder.
- ii. That the complainants, in pursuance of the application form, were allotted an independent unit bearing no. GGN-06-1401, located on the 14th floor, in the project vide provisional allotment letter dated 02.01.2019. The complainants represented to the respondent that

they shall remit every installment as specified in the payment schedule on time. The respondent had no reason to suspect the bonafide of the complainants and proceeded to allot the unit in question in their favor.

- iii. That a buyer's agreement dated 30.01.2019 was executed between the complainants and the respondent. The aforesaid agreement was executed by the complainants after reading and understanding the terms and conditions incorporated therein to their full satisfaction. The complainants have always been conscious and aware of the covenants incorporated in the buyer's agreement and have preferred the instant false and frivolous complaint in order to obtain wrongful gain and to cause wrongful loss to the respondent.
- iv. That the respondent had offered interim possession of the unit in question through letter of offer of possession dated 24.05.2019 to the complainants. The respondent had requested the complainants to remit the amounts mentioned in the said letter and obtain possession of the unit in question. However, the complainants intentionally lingered on the matter for several days for reasons best known to them. Consequently, the respondent was constrained to issue another letter dated 12.06.2019 requesting the complainants to remit the due amounts and obtain interim possession of the unit in question. It is submitted that the complainants have consciously refrained from obtaining possession of the unit in question and have

preferred the instant false and frivolous complaint in order to evade their liabilities and obligations prescribed in the buyer's agreement. It is submitted that the complainants are trying to take advantage of their own wrongs by way of the instant complaint.

- v. That the complainants were extremely irregular in payment of instalments. The respondent was constrained to issue reminders and letters to the complainants to make payment of demanded amounts. Payment request letters, reminders etc. had been got sent to the complainants by the respondent clearly mentioning the amount that was outstanding and the due date for remittance of the respective amounts as per the schedule of payments, requesting them to timely discharge their outstanding financial liability but to no avail. Statement of account dated 09.02.2021 maintained by the respondent in due course of its business depicts delay in remittance of various payments by the complainants.
- vi. That the complainants consciously and maliciously chose to ignore the payment request letters and reminders issued by the respondent and flouted in making timely payments of the instalments which was an essential, crucial and an indispensable requirement under the buyer's agreement. 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 and further causes

enormous business losses to the respondent. The complainants chose to ignore all these aspects and wilfully defaulted in making timely payments. It is submitted that the respondent 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. Therefore, there is no equity in favour of the complainants.

vii. That the rights and obligations of complainants as well as respondent are completely and entirely determined by the covenants incorporated in the buyer's agreement which continues to be binding upon the parties thereto with full force and effect. Clause 7 of the buyer's agreement provides that subject to the allottees having complied with all the terms and conditions of the agreement, and not being in default of the same, possession of the unit would be handed over by 31.12.2018 or in such time as may be extended by the competent authority. It is further provided in the buyer's agreement that time period for delivery of possession shall stand extended on the occurrence of delay for reasons beyond the control of the respondent. Therefore, the date of delivery is not liable to be determined in the manner sought to be done by the complainants. The Complainants are conscious and aware of the said agreement and have filed the present complaint to harass the Respondent and compel the Respondent to surrender to their illegal

demands. It is submitted that the filing of the present complaint is nothing but an abuse of the process of law.

- viii. That moreover, the complainants have consciously withheld the legitimate dues including but not limited to stamp charges, registration charges etc. demanded vide offer of possession, referred to above. Furthermore, it needs to be highlighted that as on 09.02.2021, an amount of Rs. 9,27,952/- was due and payable by the complainants to the respondent. It is submitted that the complainants do not have adequate funds to remit the requisite payments and have preferred the instant complaint in order to needlessly linger on the matter.
- ix. That despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. The respondent had applied for occupation certificate on 13.04.2018. The occupation certificate was thereafter issued in favour of the respondent vide memo bearing no. ZP-835/AD(RA)/2018/33193 dated 05.12.2018. It is pertinent to note that once an application for grant of occupation certificate is submitted for approval in the office of the concerned statutory authority, the respondent ceases to have any control over the same. The grant of sanction of the occupation certificate is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence. As far as the respondent is concerned,

it has diligently and sincerely pursued the matter with the concerned statutory authority for obtaining of the occupation certificate. No fault or lapse can be attributed to the respondent in the facts and circumstances of the case. Therefore, the time period utilised by the statutory authority to grant occupation certificate to the respondent is necessarily required to be excluded from computation of the time period utilised for implementation and development of the project.

- x. That the construction of the project/allotted unit in question stands completed and the respondent has already offered possession of the unit in question to the complainants. Furthermore, the project of the respondent had been registered under the Act and the rules. It is pertinent to mention that the respondent had applied for extension of the registration and the validity of registration certificate was extended till 31.12.2019. However, since the respondent has offered possession of the unit, the registration of the same has not been extended thereafter. Moreover, it needs to be taken into reckoning that the possession of the unit in question was liable to be delivered in such time as may be extended by the competent authority and therefore, the due date of delivery of possession was December 2019 in the facts and circumstances of the case.
- xi. That the complainants were offered possession of the unit in question through letter of offer of possession dated 12.08.2020. 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. However, the complainants approached the respondent 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 explained to the complainants that they were/are not entitled to any compensation in terms of the buyer's agreement on account of defaults committed by them. However, the complainants threatened the respondent 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 the respondent.
- xii. That it is denied that any assurance of providing maintenance benefit of ₹ 150,000 was offered by the respondent to the complainants at any time. It is submitted that the maintenance benefit was in the form of discount voucher and the same was liable to be adjusted with the last instalment. Furthermore, the same had been adjusted by the respondent at the time of offer of possession.
- xiii. That several allottees have defaulted in timely remittance of payment of installments which was an essential, crucial and an indispensable requirement for conceptualisation 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. It is submitted that the construction of the tower in which the unit in question is situated is complete and the respondent has already offered possession of the unit in question to the complainants. Therefore, there is no default or lapse on the part of the respondent and there is no equity in favour of the complainants. It is evident from the entire sequence of events, 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 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 respondent

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 had applied for grant of occupation certificate on

13.04.2018 and thereafter vide memo no. ZP-835-AD(RA)/2018/33193 dated 05.12.2018, 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 05.12.2018 that an incomplete application for grant of OC was applied on 13.04.2018 as fire NOC from the competent authority was granted only on 21.11.2018 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 11.10.2018. The District Town Planner, Gurugram and Senior Town Planner, Gurugram has submitted requisite report about this project on 31.10.2018 and 02.11.2018 respectively. As such, the application submitted on 13.04.2018 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 21.11.2018

and consequently the concerned authority has granted occupation certificate on 05.12.2018. Therefore, in view of the deficiency in the said application dated 13.04.2018 and aforesaid reasons, no delay in granting occupation certificate can be attributed to the concerned statutory authority.

G. Findings on the reliefs sought by the complainants

G.I Possession and delay possession charges

13. 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."

14. 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

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 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."

15. **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.
16. 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 interim 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.
17. 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, the 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 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.

18. 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 and as admitted by the respondent, the final offer of possession was made to the complainants on 12.08.2020. Therefore, the respondent has failed to handover possession as per the terms of the buyer's agreement.

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

20. 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.
21. 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., 26.08.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
22. **Rate of interest to be paid by the complainants in case of delay in making payments:** 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 the complainants 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. By virtue of clause 7(a) of the buyer's agreement executed between the parties, 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 finally offered to the complainants on 12.08.2020. 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 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 12.08.2020. So, it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. These 2 months' of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they have 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. 31.12.2018 till the expiry of 2 months from the date of offer of possession (12.08.2020) which comes out to be 12.10.2020.

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 12.10.2020 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

G.II Quash demand on account of advance monthly maintenance for 24 months amounting to Rs.1,44,540/-

27. The complainants submitted that at the time of booking, the complainants were assured that the respondent will be providing maintenance benefit of Rs.1,50,000/- and the same will be adjusted in the last instalment. However, the respondent has raised a demand of Rs.1,44,450/- along with letter of offer of possession dated 12.08.2020.
28. The respondent in its reply has denied that any assurance of providing maintenance benefit of ₹ 150,000 was offered by the respondent to the complainants at any time. It is submitted that the maintenance benefit was in the form of discount voucher and the same was liable to be adjusted with the last instalment. Furthermore, the same had been adjusted by the respondent at the time of offer of possession.
29. The authority has perused the documents placed on record. As per the booking application form, the respondent in the payment plan annexed as Annexure B, has stated that- "*Maintenance Benefits amount shall be adjusted with the last installment as credit note in property account.*" Thereafter, the respondent has also incorporated the said benefit in the

buyer's agreement also and parties are bound by the covenants of the said agreement. The relevant provision was stated under point 7 of the payment plan annexed as Annexure-III to the buyer's agreement and reads as follows: "*Maintenance Benefits amounting Rs.150000/- will be adjusted in the last installment.*" The respondent, despite this benefit in favour of the complainants, has raised another demand of Rs.1,44,540/- towards maintenance. However, as per statement of account dated 12.08.2020 issued along with offer of possession dated 12.08.2020, the respondent has granted the said benefit in the account ledger and this fact was also admitted by the respondent as mentioned above. From the aforesaid facts, it is observed that the respondent is wrong in demanding Rs.1,44,540/- by the complainants despite its commitment of giving maintenance benefit to the complainants. Therefore, the demand of Rs.1,44,540/- is hereby quashed.

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 complainants from due date of possession i.e. 31.12.2018 till 12.10.2020 i.e. expiry of 2 months from the date of offer of

possession (12.08.2020). 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 interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 9.30% by the respondent which is the same as is being granted to the complainants in case of delayed possession charges.
 - iii. The demand of Rs.1,44,540/- raised by the respondent on account of maintenance charges is hereby quashed for the reasons quoted above.
 - iv. 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. 3864-3889/2020 decided on 14.12.2020.
31. Complaint stands disposed of.
32. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Samir Kumar)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 26.08.2021