BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 3927 of 2020
First date of hearing: 08.01.2021
Date of decision : 24.08.2021

Girish Gopal Iyer
S/o Sh. S Gopal,
R/o: - House No. E-340A, Greater Kailash,
Part- I, New Delhi- 110048 **Complainant**

Versus

M/s Raheja Developers Limited.
Regd. office: W4D, 204/5,
Keshav Kunj, Western Avenue, Sainik Farma,
New Delhi- 110062 **Respondent**

CORAM:
Shri Samir Kumar **Member**
Shri Vijay Kumar Goyal **Member**

APPEARANCE:
Sh. Abhay Jain Advocate for the complainant
Sh. Mukul Kumar Sanwariya
Sh. Saurabh Seth
Ms. Gauri Desai Advocates for the respondent

ORDER

1. The present complaint dated 26.11.2020 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed

that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S.No.	Heads	Information
1.	Project name and location	"Vedas Tower in Raheja Vedaanta", Sector-108-Gurugram.
2.	Project area	10.668 acres
3.	Nature of the project	Group housing complex
4.	DTCP license no. and validity status	204 of 2007 dated 11.08.2007 valid till 10.08.2017
5.	Name of licensee	Pinne Industrial Consultants Pvt. Ltd.
6.	RERA registered/not registered	Not Registered
7.	Unit no.	E-093, 9th floor, tower- E [Page 39 of complaint]
8.	Unit measuring	1790 sq. ft.
9.	Date of provisional allotment letter	10.01.2011 [page no. 14 of reply]
10.	Date of execution of agreement to sell	19.07.2011 [Page 38 of complaint]

11.	Payment plan	Installment payment plan. [Page 59 of complaint]
12.	Total consideration	Rs.85,52,579/- [as per applicant ledger dated 19.03.2020 Page 72 of complaint]
13.	Total amount paid by the complainant	Rs.85,52,579/- [as per applicant ledger dated 19.03.2020 Page 72 of complaint]
14.	Due date of delivery of possession as per clause 4.2 of the agreement to sell: 24 months from the date of execution of agreement plus 6 Months grace period in case of construction work is not completed within the time framed mentioned above. [Page 46 of complaint]	19.07.2013 [Note: - 6 months grace period is not allowed]
15.	Occupation Certificate	17.11.2014
16.	Date of possession letter	26.03.2017 [Page 68 of complaint]
17.	Delay in handing over possession till 26.03.2017 i.e. date of offer of possession (26.05.2017) + 2 months	3 years 10 months and 7 days

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -

I. The respondent/promoter published very attractive brochure highlighting the residential project "Raheja Vedaanta" at Sector- 108, Gurugram, Haryana. The

respondent claimed to be one of the best and finest in construction and one of the leading real estate developers of the country in order to lure prospective customers to buy apartment in the project. There are fraudulent misrepresentations, incorrect and false statements in the brochure. The complainant invites attention of the Haryana Real Estate Regulatory Authority, Gurugram to Section 12 of the Act, 2016. The project was launched in 2011 with the promises to deliver in time and huge funds were collected over the period by the respondent.

II. The complainant was approached by the representatives of the developer. The sale representatives claimed the project as the world class project. The complainant was invited to the sales office and was lavishly entertained, and promises were made to him that the project would be completed including parking and other common area facilities in time. The complainant was impressed by their statements and oral representations and ultimately lured to pay Rs.1,00,000/- via cheque no. 820776 as booking amount, duly acknowledged by the respondent, for the apartment on 10.01.2011. That the agreement to sell for the apartment was executed between the complainant and the respondent on 19.07.2011 and the respondent

delivered the possession of the apartment no. E-093, measuring 1894.55 sq. ft. on 26.03.2017 to the complainant. That a total amount of Rs.88,02,736/- as demanded by the respondent till 19.03.2020. The applicant ledger issued by the respondent company on 19.03.2020 has been paid including the stamp duty, legal charges, registration charges, deed charges etc. by the complainant to the respondent.

III. That the respondent collected Rs.4,47,900/- on 15.12.2014 on account of stamp duty, and other charges for registration of the apartment and Rs.25,000/- for legal charges from the complainant but till date no registration deed has been executed by the respondent.

IV. That the respondent was duty bound to execute the conveyance deed in favour of the complainant but till date the respondent has failed to execute the conveyance deed for the apartment. This is violation of section 11 (4) (f) read with Section 17 of the Act, 2016. Since March 2017 the respondent has not been executing the conveyance deed in favour of the complainant.

V. The respondent has failed to mark the exclusive car parking area for the apartment bought by the complainant. Despite various letters, telephone calls,

numerous visited to the office of the respondent for marking the area for car parking, the respondent has failed to fulfil his obligation and commitments in the agreement to sell.

VI. That he had also paid Rs.1,79,000/- on the account of interest-bearing maintenance security (IBMS) to the respondent but this huge amount has not been returned to the maintenance agency or to the RWA by the respondent.

VII. That, as per clause 4.2 of the agreement to sell, which was signed between the parties on 19.07.2014, the possession of the apartment was to be handed over within 24 months plus 6 months grace period from the signing of the agreement to sell. Thus the date of possession has to be considered on 19.01.2014. But the actual and legal possession of the apartment was given to the complainant on 26.03.2017. Thus the complainant is entitled for delay possession charges as per the Section 18 of the Real Estate (Regulation and Development) Act, 2016.

VIII. That after a delay of more than three (3) years and eights (8) months after receiving the total consideration, the respondent has failed to execute the conveyance deed for the apartment, bought by the complainant. The

complainant approached the respondent many times and pleaded for execution of conveyance deed for his apartment as per the commitments in the agreement. The respondent did not submit any justified response to his letters, emails, telephone calls and personal visits seeking information about the status of the execution of conveyance deed for his apartment.

IX. That the respondent has in an unfair manner siphoned off funds meant for the project and utilised the same for his own personal benefits for no cost and left the complainant high and dry at his own fate. The respondent being builder and developer, whenever in need of funds from banks or investors ordinarily has to pay heavy interest per annum. However in the present scenario, the respondents have utilised funds collected from the complainant and other such buyers for their own good and utilised this huge amount in some other projects being developed and maintained by the respondent.

X. That the respondents have cheated the complainant knowingly and have taken monies by deception, made fraudulent representations and deliberate false written promises. The fraudulent behaviour of the respondents also attracts criminal liability under the Indian Criminal

dispensation system. The conducts of the respondents are suspect, wilfully unfair and arbitrary, deficient in every manner and scandalous. The complainant has lost faith, confidence, and trust in the respondents as the respondents are continuously deceptive and non-responsive.

XI. That equity demands that such unscrupulous developers/sellers/builders, who after taking complete cost of the commercial space do not perform their part of obligations, should not be spared. A strong message is required to be sent to such developers/promoters that the Haryana Real Estate Regulatory Authority, Gurugram is not helpless in such type of matter.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s)

I. To direct the respondent to execute a legitimate and lawful conveyance deed for the apartment bought by the complainant.

II. To direct the respondent to pay interest for every month of delay, since December 2014, on the amount which the complainant paid for the charges for stamp duty, legal charges, registration charges and deed charges and additional charges for the aforesaid shop, at the rate prescribed by the Act, 2016 till the respondent executes

a registered conveyance deed in the favour of the complainant.

III. To direct the respondents to pay interest for every month of delay in offering the possession of the apartment to the complainant, on the amount taken from the complainant for the sale consideration amount for the aforesaid apartment at the prescribed rate as per the Act, 2016.

IV. To direct the respondent to handover the maintenance of the complex to the resident welfare association and meanwhile maintain the complex in a proper and dignified manner.

V. To direct the respondents to mark the separate exclusive car parking slot for the apartment bought by the complainant.

5. On the date of hearing, the Authority explained to the respondents/promoters on the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent contested the complaint on the following grounds. The submissions made therein, in brief is as under: -

i. That the present complaint is based on vague, misconceived notions and baseless assumptions of the

complainant and these are, therefore, denied. The complainant has not approached this authority with clean hands and has suppressed the true and material facts. The complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. It is submitted that the instant complaint is absolutely, malicious, vexatious, and unjustifiable and accordingly has to pave the path of singular consequence, that is, dismissal.

ii. That the respondent is traversing and dealing with only those allegations, contentions and/or submissions that are material and relevant for the purpose of adjudication of present dispute. It is further submitted that save and except what would appear from the record and what is expressly admitted herein, the remaining allegations, contentions and/or submissions shall be deemed to have been denied and disputed by the respondent.

iii. The project Raheja "Vedanta" is not an ongoing project, it was completed in the year 2014, much prior to the coming of the Real Estate (Regulation and Development) Act, 2016. Possession has already been taken by the complainant hence the provisions of the Act are not applicable to the said complaint making it liable for dismissal.

iv. That the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e. clause 15.2 of the buyer's agreement.

v. That the complainant has not approached this authority with clean hands and has intentionally suppressed and concealed the material facts in the present complaint. The present complaint has been filed by it maliciously with an ulterior motive and it is nothing but a sheer abuse of the process of law. The true and correct facts are as follows: -

- That the respondent is a reputed real estate company having immense goodwill, comprised of law abiding and peace-loving persons and has always believed in satisfaction of its customers. The respondent has developed and delivered several prestigious projects such as 'Raheja Atlantis', 'Raheja Navodaya', and 'and in most of these projects large number of families have already shifted after having taken possession and resident welfare associations have been formed which are taking care of the day to day needs of the allottees of the respective projects. That the complainant after

checking the veracity of the project namely, "Vedaanta", Sector-108, Gurgaon had applied for the same vide application form.

- That the complainant booked flat no. E-093, in, the respondent's housing project "Vedaanta" vide allotment letter dated 10.01.2011. The booking of the said allotted floor was done prior to the enactment of the Real Estate (Regulation and Development) Act, 2016 and the provisions laid down in the said Act cannot be applied retrospectively.
- That the occupation certificate with respect to the project and specifically with respect to the tower in question has already been obtained on17.11.2014, prior to coming in force of RERA, Act, 2016.
- That the complainant is not 'awaiting' construction as per the terms and tenure of the application form and agreement signed and has filed this complaint only to earn profit from the respondent/builder under the pretext of provisions of RERA Act, 2016.
- That the possession of the flat has already been handed over to the complainant on and in this regard the complaint is baseless and liable to be dismissed. Under these circumstances passing any adverse order against

the respondent at this stage would amount to complete travesty of justice.

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 and submissions made by the parties.

E. Jurisdiction of the authority

8. 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 complainant 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

9. Objection raised the respondent that the authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the flat 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 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."

10. 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."*

11. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the 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 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 any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

F.II Objection regarding complainant is in breach of agreement for non-invocation of arbitration

12. The respondent had raised an objection for not invoking arbitration proceedings as per the provisions of flat buyer's agreement which contains provisions regarding initiation of arbitration proceedings in case of breach of agreement. The clause 14.2 has been incorporated w.r.t arbitration in the buyer's agreement: -

> *"All or any disputes arising out or touching upon in relation to the terms of this Application/Agreement to Sell/ Conveyance Deed including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled through arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/ modifications thereof for the time being in force. The arbitration proceedings shall be held at the office of the seller in New Delhi by a sole arbitrator who shall be appointed by mutual consent of the parties. If there is no consensus on appointment of the Arbitrator, the matter will be referred to the concerned court for the same. In case of any proceeding, reference etc. touching upon the arbitrator subject including any award, the territorial jurisdiction of the Courts shall be Gurgaon as well as of Punjab and Haryana High Court at Chandigarh".*

13. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section

88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in ***National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506***, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force. Consequently, the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. Therefore, by applying the same analogy, the presence of arbitration clause could not be construed to take away the jurisdiction of the authority.

14. Further, in ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017***, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and builders could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

> *"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short "the Real Estate Act"). Section 79 of the said Act reads as follows: -*

> *"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."*
>
> *It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellant Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra), the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act.*
>
> *...*
>
> *56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated kind of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section 8 of the Arbitration Act."*

15. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the builder buyer agreement, the hon'ble Supreme Court **in case titled as M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018** has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all

courts within the territory of India and accordingly, the authority is bound by the aforesaid view. The relevant paras are of the judgement passed by the Supreme Court is reproduced below:

> *"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."*

16. Therefore, in view of the above judgements and considering the provision of the Act, the authority is of the view that complainant is well within her right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

G. Findings on the relief sought by the complainant.

G.I. Delayed possession charges

17. In the present complaint, the complainant intend 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."*

18. Clause 4.2 of the agreement to sell provides for handing over of possession and is reproduced below:

> **"4. POSSESSION**
>
> *4.2 "That the seller endeavor to give possession of the apartment to the Purchaser within twenty-four (24) months from the date of the execution of this Agreement and after providing necessary infrastructure in the sector by the Government, but subject to force majeure condition or any Government/Regulatory authority's action, inaction or omission and reasons beyond the control of the seller. However, the seller shall be entitled for compensation free grace period of six (6) months, in case the construction is not completed within the time framed mentioned above. The seller on obtaining certificate for occupation and use by the Competent Authorities shall hand over the Apartment to the Purchaser for his/her occupation and use and subject to the Purchaser having complied with all the terms and condition of this Flat Buyer Agreement....."*

19. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to timely payment by the intending complainant of total price, stamp duty, registration charges and any other changes due and payable according to the payment plan. 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 making payment as per the plan may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the plot buyer 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.

20. **Payment of delay possession charges at 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.*

21. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

22. 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., **24.08.2021 is 7.30%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.

23. 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;"*

24. 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.

G. II. Direct the respondent to execute a legitimate and lawful conveyance deed for the apartment bought by the complainant.

25. In the present case, the complainant was offered possession by the respondent on 26.03.2017 in respect of unit no. E-093, 9th floor Tower-E after receipt of occupation certificate dated 17.11.2014. 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 19.07.2011 executed between the parties.

26. It is observed that proviso to clause 11(iii) of the buyer's agreement dated 19.07.2011 provides for execution of conveyance deed in favor of an allotee within reasonable time. The relevant clause of the buyer's agreement reads under:

> *"That the parties shall undertake to execute the Conveyance deed within sixty (60) days from the date of intimation in writing by the Seller to the purchase about the receipt of the certificate for use and occupation of the said complex from the competent authority subject to payment by the purchaser to the seller the sale consideration and all other dues in terms of the payment plan.*
> *In case of the Purchaser who has opted for long term payment plan arrangement with any financial institutions/Banks, the conveyance of the apartment in favour of the purchaser shall be executed only upon the Seller receiving No Objection Certificate for such Financial Institutions/Bank"*

27. Since the developer do not mention any specific time period for executing the conveyance deed in the BBA nor has mentioned in the offer of possession therefore this reasonable time would mean same as mentioned in, proviso to Section 17(1) of the Act i.e., 3 months from the date of issue of occupancy certificate. The proviso to section 17(1) is produced as under: -

> *"……..*
> *Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried. out by the promoter within three months from date of issue of occupancy certificate*
> *……."*

28. On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due

date as per the agreement. By virtue of clause 4.2 of the flat buyer's agreement executed between the parties on 19.07.2011, the possession of the subject apartment was to be delivered within a period of 24 months from the date of execution of this agreement. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession is 19.07.2013. Occupation certificate has been received by the respondent on 17.11.2014 and the possession of the subject unit was offered to the complainants on 26.03.2017. 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 complainant as per the terms and conditions of the flat buyer's agreement dated 19.07.2011 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the flat buyer's agreement dated 19.07.2011 to hand over the possession within the stipulated period.

29. 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 17.11.2014. The respondent offered the possession of the unit in question to the complainant only on 26.03.2017, 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, the complainant should be given 2 months' time from the date of offer of possession. This 2 month of reasonable time is being given to the complainant 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. 19.07.2013 till the expiry of 2 months from the date of offer of possession (26.03.2017) which comes out to be 26.05.2017.

30. 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 at prescribed rate of interest i.e. 9.30% p.a. w.e.f. 19.07.2013 till 26.05.2017 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

H. Directions of the authority

31. 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. 19.07.2013 till 26.05.2017 i.e. the expiry of 2 months from the date of offer of possession. 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. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

iii. The respondent is directed to execute the conveyance deed within one month.

iv. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

v. The respondent shall not charge anything from the complainant which is not the part of the flat buyer's agreement. The respondent is not entitled to claim any holding charges from the complainant/allottee at any point of time even after being part of flat buyer's agreement as per law settled by hon'ble Supreme Court in civil appeal no. 3864-3899/2020 decided on 14.12.2020.

32. Complaint stands disposed of.

33. File be consigned to registry.

(Samir Kumar)
Member

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 24.08.2021
Judgement uploaded on 29.10.2021