

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

Complaint no. : 1011 of 2020  
First date of hearing : 03.04.2020  
Date of decision : 12.10.2021

Veena Dang  
(Through SPA Holder Mr. H.L. Dang)  
R/o: H. No. 149, Sector-27,  
Gurugram, Haryana.

**Complainant**

Versus

M/s Emaar MGF Land Ltd.  
Office: Emaar Business Park,  
M.G. Road, Sikanderpur Chowk,  
Sector-28, Gurugram-122002, Haryana.

**Respondent**

**CORAM:**

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

**Chairman  
Member  
Member**

**APPEARANCE:**

Shri Satish Tanwar  
Shri J.K. Dang

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. The present complaint dated 06.03.2020 has been filed by the complainant/allottee in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter se them.

**A. Project and unit related details**

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

S.No.	Heads	Information
1.	Project name and location	"Imperial Gardens", Sector 102, Gurugram.
2.	Project area	12 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	107 of 2012 dated 10.10.2012 valid till 09.10.2020
5.	Name of licensee	Kamdhenu Projects Pvt. Ltd. and Emaar MGF Land Ltd.
6.	HRERA registered/ not registered	<b>Registered in two phases</b> i. 208 of 2017 dated 15.09.2017 [Valid up to 31.12.2018 for 49637 sq. mtrs. and extension granted vide no.3/2019 dated 02.08.2019 which is extended up to 31.12.2019] ii. 14 of 2019 dated 28.03.2019 (Phase II) [Valid up to 17.10.2018 for 4.57 acres]
7.	Occupation certificate granted on	17.10.2019 [Page 135 of reply]
8.	Provisional allotment letter dated	27.02.2013 [Page 21 of complaint]
9.	Unit no.	IG-06-1104, 11 <sup>th</sup> floor, tower/ building no. 6 [Page 33 of complaint]
10.	Unit measuring	2000 sq. ft.

		[Page 33 of complaint]
11.	Date of execution of buyer's agreement	28.05.2013 [Page 30 of complaint]
12.	Payment plan	Construction linked payment plan [Page 64 of complaint]
13.	Total consideration as per statement of account dated 16.04.2020	Rs.1,74,26,616/- [Page 128 of reply]
14.	Total amount paid by the complainant as per statement of account dated 16.04.2020	Rs.1,67,56,500/- [Page 129 of reply]
15.	Date of start of construction as per statement of account dated 16.04.2020	11.11.2013
16.	Due date of delivery of possession as per clause 14(a) of the said agreement i.e. 42 months from the date of start of construction (11.11.2013) plus grace period of 3 months for applying and obtaining the CC/OC in respect of the unit and/or the project. [Page 48 of complaint]	11.05.2017 [Note: Grace period is not allowed]
17.	<b>Date of offer of possession to the complainant</b>	24.10.2019 [Page 138 of reply]
18.	Delay in handing over possession till 24.12.2019 i.e. date of offer of possession (24.10.2019) + 2 months	2 years 7 months 13 days

**B. Facts of the complaint**

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

- i. That the respondent through its marketing executives and advertisement through various medium and means lured the complainant and on the basis of representation and advertisements showcased by the respondent booked an apartment on 26.02.2013 admeasuring 2000 sq. ft. in the

respondent's project namely 'Imperial Gardens' by paying Rs.10,00,000/- as booking amount. The complainant was provisionally allotted a unit no. IG-06-1104 vide allotment letter dated 27.02.2013 and was assured that the respondent is a reputed builder and assured that till date, they have not delayed the possession of any of its project and the possession of this project will also be delivered in time i.e. within 42+3 months from the date of commencement of the construction more specifically stated in clause-31 of allotment letter dated 27.02.2013.

- ii. That the buyer's agreement was executed between the parties on 28.05.2013 wherein the total sale consideration of an apartment was fixed at Rs.1,63,56,000/- and till date the complainant had paid Rs. 1,63,06,828/-. That as per the clause14(a) of the said buyer's agreement, the respondent had agreed and promise to complete the construction of the said apartment and deliver its possession within a period of 42 months, with a grace period of 3 months thereon from the date of commencement of the construction, but the buyer's agreement nor any document provided by the respondent to the complainant, nowhere discloses the date of commencement of the construction including the payment plan and payments receipts issued by the respondents. That the respondent has failed to give possession by May 2017, with the limit of 42 months from execution of agreement with 90 days grace period as per commitment of respondent.
- iii. That through various emails (09.07.2019, 20.08.2019, 07.10.2019, etc.), the complainant requested respondent to handover possession and pay interest/ compensation till date and the

respondent has miserably failed to pay delay possession compensation as per the buyer's agreement till date. The cause of action accrued in favour of the complainant and against the respondent on 26.02.2013 when the complainant had booked the said apartment and it further arose when respondent failed/neglected to deliver the said apartment. The cause of action is continuing and is still subsisting on day-to-day basis.

**C. Reliefs sought by the complainant**

4. The complainant has sought the following reliefs:
  - i. Direct the respondent to handover the possession of the unit bearing no. IG-06-1104 in the said project.
  - ii. Direct the respondent to pay delay possession charges to the complainant due to delay in handing over possession of the said apartment along with future and pendent lite compounding interest @ 18% per annum from the date of payment till its final payment.
  - iii. Any other relief/order or direction which this hon'ble authority may deem 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 to plead guilty or not to plead guilty.

**D. Reply filed by the respondent**

6. The respondent had contested the complaint on the following grounds:

- i. The complainant has filed the present complaint seeking compensation and interest for alleged delay in delivering possession of the unit booked by the complainant. It is respectfully submitted that complaints pertaining to interest, compensation, etc. 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. Furthermore, the registration of the project under the Act was valid up to 31.12.2019. Since, the occupation certificate has been issued in respect of the entire project, the registration of the project has not been extended. Thus, the provisions of the Act are not applicable to the project any longer and consequently this hon'ble authority does not have the jurisdiction to hear or decide the present complaint.
- ii. That the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. It is further submitted that merely because the Act applies to ongoing projects which are registered with the authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainant cannot be called in to aid in derogation and ignorance of the provisions of the buyer's agreement. The interest is compensatory in nature and cannot be granted in derogation and ignorance of the provisions of the buyer's agreement.
- iii. That vide provisional allotment letter dated 27.02.2013, the complainant was provisionally allotted apartment no. IG-06-1104, located on the 11<sup>th</sup> floor in tower/building no. 6, having

approximate super area of 2000 sq. ft. The complainant had opted for a payment plan which was partially construction linked. Thereafter, the buyer's agreement was executed inter se parties on 28.05.2013. Right from the very beginning, the complainant had been extremely irregular with regard to payment. Consequently, the respondent had to issue notices and reminders calling upon the complainant to pay the amounts as per the payment plan. The statement of account dated 16.04.2020 reflects the payments made by the complainant and accrued delayed payment interest.

- iv. That as per the terms and conditions of the buyer's agreement dated 28.05.2013, the complainant is under a contractual obligation to make timely payment of all amounts payable under the buyer's agreement, on or before the due dates of payment failing which the respondent is entitled to levy delayed payment charges in accordance with clause 1.2(c) read with clauses 12 and 13 of the buyer's agreement. The complainant had been habitual defaulter since the very beginning.
- v. That in the meanwhile, the respondent got the project registered under the provisions of the Act and the certificate of registration bearing no. 208 of 2017 was granted. The project had been registered initially till 31.12.2018. However, due to unavoidable circumstances, the respondent was constrained to seek extension of registration and thereafter, the validity of registration was extended up till 31.12.2019. The project has been duly completed and the occupation certificate has been received in respect of the entire project. Hence, the project is no longer registered under the Act.

vi. That in so far as tower in which the apartment in question is situated is concerned, the respondent completed construction of the same within the extended period of registration and applied for the occupation certificate in respect thereon on 11.02.2019. The occupation certificate was issued by the competent authority on 17.10.2019. Upon receipt of the occupation certificate, the respondent offered possession of the apartment in question to the complainant vide letter dated 24.10.2019. The complainant was called upon to remit balance amount outstanding as per the attached statement and also to complete the necessary formalities and documentation so as to enable the respondent to hand over possession of the apartment to the complainant. Although being in default of the buyer's agreement and consequently not entitled to any compensation in terms of clause 16(c) of the buyer's agreement, nevertheless, the respondent has proceeded to credit compensation amounting to Rs. 3,96,493/- to the complainant. In terms of clause 16(d) of the buyer's agreement, no compensation is payable for the time taken by statutory/competent authorities or due to delay or non-receipt of the occupation certificate. However, the complainant did not come forward to take possession of the apartment and also failed to remit the balance payment due and payable by the complainant, despite reminders for possession.

vii. That the construction of the tower in which the apartment in question is situated was commenced on 11.11.2013. The period of 42 months plus 3 months grace period expires on 11.08.2017. However, on account of delay and defaults by the complainant, the



due date for delivery of possession stands extended in accordance with clause 14(b)(iv) of the buyer's agreement, till payment of all outstanding amounts to the satisfaction of the respondent. Furthermore, the respondent had completed construction of the apartment/tower by February 2019 and had applied for issuance of the occupation certificate on 11.02.2019. The occupation certificate was issued by the competent authority on 17.10.2019. It is respectfully submitted that after submission of the application for issuance of the occupation certificate, the respondent cannot be held liable in any manner for the time taken by the competent authority to process the application and issue the occupation certificate. Thus, the said period taken by the competent authority in issuing the occupation certificate as well as time taken by government/statutory authorities in according approvals, permissions etc., necessarily have to be excluded while computing the time period for delivery of possession.

- viii. That the respondent has been prevented from timely implementation of the project by reasons beyond its power and control. It is submitted that the respondent had appointed contractor i.e. Capacite Infraprojects Ltd. on 17.09.2013 for construction and implementation of the project in question. However, the said contractor was not able to meet the agreed timeline for construction of the project. The said contractor failed to deploy adequate manpower, shortage of material etc. Therefore, no fault or lapse can be attributed to the respondent of the facts and circumstances of the case.

- ix. That several allottees have defaulted in timely remittance of payment of instalments 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. 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 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 and provisions of the Act are not retrospective in nature**

11. The respondent raised an objection that the provisions of the Act are not retrospective in nature and the provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into force of the Act. 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 entered into between the buyers and sellers prior to coming into force of the Act. 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."*

12. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there

is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the buyer's agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of the Act and are not unreasonable or exorbitant in nature.

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

13. As far as contention of the respondent with respect to the exclusion of time taken by the competent authority in processing the application and issuance of occupation certificate is concerned, the authority observed that the respondent has applied for grant of occupation certificate on 11.02.2019 and thereafter vide memo no. ZP-845/AD(RA)/2019/25815 dated 17.10.2019, the occupation certificate has been granted by the competent authority under the prevailing law. The authority cannot be a silent spectator to the deficiency in the application submitted by the promoter for issuance of occupancy certificate. It is evident from the occupation certificate dated 17.10.2019 that an incomplete application for grant of OC was applied on 11.02.2019 as fire NOC from the competent authority was granted only on 30.05.2019 which is subsequent to the filing of application for

occupation certificate. Also, the Chief Engineer-I, HSVP, Panchkula has submitted his requisite report in respect of the said project on 25.07.2019. The District Town Planner, Gurugram and Senior Town Planner, Gurugram has submitted requisite report about this project on 06.09.2019 and 07.09.2019 respectively. As such, the application submitted on 11.02.2019 was incomplete and an incomplete application is no application in the eyes of law.

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

**G. Findings of the authority**

**G.I Delay possession charges**

15. **Relief sought by the complainant:** The below-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and these reliefs are interconnected.

- i. Direct the respondent to handover the possession of the unit bearing no. IG-06-1104 in the said project.
- ii. Direct the respondent to pay delay possession charges to the complainant due to delay in handing over possession of the said apartment along with future and pendente lite compounding interest @ 18% per annum from the date of payment till its final payment

16. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under:

***"Section 18: - Return of amount and compensation***

***18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —***

.....

***Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."***

17. Clause 14(a) of the buyer's agreement dated 28.05.2013 provides time period for handing over the possession and the same is reproduced below:

**"14. POSSESSION**

**(a) Time of handing over the Possession**

*Subject to terms of this clause and barring force majeure conditions, and subject to the Allottee having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 42 (Forty Two) months from the date of start of construction; subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the Company shall be entitled to a grace period of 3 (three) months after the expiry of the said period of 42 months, for applying and obtaining the completion certificate/ occupation certificate in respect of the Unit and/or the Project."*

18. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment time period for handing over possession loses its meaning. The incorporation of such clause in



the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

19. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 42 months from the date of start of construction and it is further provided in agreement that promoter shall be entitled to a grace period of 3 months after expiry of the said period of 42 months, for applying and obtaining completion certificate/occupation certificate in respect of said unit. The date of start of construction is 11.11.2013 as per statement of account dated 16.04.2020. The period of 42 months expired on 11.05.2017. As a matter of fact, the promoter has not applied to the concerned authority for obtaining completion certificate/ occupation certificate within the time limit (42 months) prescribed by the promoter in the buyer's agreement. The promoter has moved the application for issuance of occupation certificate only on 11.02.2019 when the period of 42 months has already expired. As per the settled law, one cannot be allowed to take advantage of his own wrong. Accordingly, the benefit of grace period of 3 months cannot be allowed to the promoter at this stage.

20. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the rate of 18% p.a. 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.*

21. The legislature in its wisdom in the subordinate legislation under rule 15 of the rules has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
22. Taking the case from another angle, the complainant-allottee was entitled to the delayed possession charges/interest only at the rate of Rs.7.50/- per sq. ft. per month of the super area as per clause 16 of the buyer's agreement for the period of such delay; whereas, as per clause 13 of the buyer's agreement, the promoter was entitled to interest @

24% per annum at the time of every succeeding instalments for the delayed payments. The functions of the authority are to safeguard the interest of the aggrieved person, may be the allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of his dominate position and to exploit the needs of the home buyers. This authority is duty bound to take into consideration the legislative intent i.e., to protect the interest of the consumers/allottees in the real estate sector. The clauses of the buyer's agreement entered into between the parties are one-sided, unfair and unreasonable with respect to the grant of interest for delayed possession. There are various other clauses in the buyer's agreement which give sweeping powers to the promoter to cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the buyer's agreement are ex-facie one-sided, unfair and unreasonable, and the same shall constitute the unfair trade practice on the part of the promoter. These types of discriminatory terms and conditions of the buyer's agreement will not be final and binding.

23. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 12.10.2021 is 7.30%. Accordingly, the prescribed rate of interest will be MCLR +2% i.e., 9.30%.
24. **Rate of interest to be paid by the complainant 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;"*

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

26. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 14(a) of the buyer's agreement executed between the parties on 28.05.2013, possession of the booked unit was to be delivered within a period of 42 months from the date of start of construction plus 3 months grace period for applying and obtaining the completion certificate/ occupation certificate in

respect of the unit and/or the project. The construction was started on 11.11.2013. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 11.05.2017. Occupation Certificate has been received by the respondent on 17.10.2019 and the possession of the subject unit was offered to the complainant on 24.10.2019. 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 complainant as per the terms and conditions of the buyer's agreement dated 28.05.2013 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 28.05.2013 to hand over the possession within the stipulated period.

27. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 17.10.2019. The respondent offered the possession of the unit in question to the complainant only on 24.10.2019, 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 months' of reasonable time is being given to the complainant keeping

in mind that even after intimation of possession, practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 11.05.2017 till the expiry of 2 months from the date of offer of possession (24.10.2019) which comes out to be 24.12.2019. Furthermore, the complainant is directed to take possession of the unit in question within 2 months from the date of this order.

28. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at prescribed rate of interest i.e. 9.30% p.a. w.e.f. 11.05.2017 till 24.12.2019 as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

29. Also, the amount of Rs.3,96,493/- (as per statement of account dated 16.04.2020) so paid by the respondent to the complainant towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.



**H. Directions of the authority**

30. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to pay the interest at the prescribed rate i.e. 9.30% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 11.05.2017 till 24.12.2019 i.e. the expiry of 2 months from the date of offer of possession (24.10.2019). The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.
- ii. Also, the amount of Rs.3,96,493/- so paid by the respondent towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.
- iii. The complainant is directed to take possession of the subject unit within 2 months from the date of this order.
- iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. The rate of interest chargeable from the complainant /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 delay 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 buyer's agreement. Moreover, holding charges shall not be charged by the promoter at any point of time even after being part of agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020.

31. Complaint stands disposed of.

32. File be consigned to registry.

  
(Samir Kumar)  
Member

  
(Vijay Kumar Goyal)  
Member

  
(Dr. K.K. Khandelwal)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.10.2021

Judgement uploaded on 24.11.2021.