

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

Complaint no. : 4365 of 2020
First date of hearing : 26.02.2021
Date of filing : 08.12.2020
Date of decision : 07.04.2021

1. Sandeep
2. Neeraj Devi
Both RR/o: House no. 16, Gali no. 4B, Ashok
Vihar, Phase-3, Gurugram-122001

Complainants

Versus

M/s GLS Infratech Pvt. Ltd.
Regd. and Corp. office at: 707, 7th Floor, JMD
Pacific Square, Sector-15, Part-2, Gurugram

Respondent

CORAM

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

**Chairman
Member
Member**

APPEARANCE:

Ms. Surbhi Garg Advocate for the complainants
Shri Sandeep Chaudhary Advocate for the respondent

ORDER

1. The present complaint has been filed by the complainants/allottees 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 provisions of this Act or the rules and regulations made thereunder or to the allottee as per the agreement to sell executed *inter se*.

A. Unit and project 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	Description
1.	Project name and location	"Arawali Homes", Damdama Lake Road, Village Khaika, Sector 4, Sohna, Gurugram
2.	Project area	10 acres
3.	Nature of the project	Affordable group housing project
4.	DTCP license no. and validity status	110 of 2014 dated 14.08.2014 valid till 11.04.2020
5.	Name of the licensee	GLS Infratech Pvt. Ltd.
6.	RERA Registered/not registered	Registered
7.	RERA Registration no.	232 of 2017 dated 19.09.2017
8.	Validity	13.08.2019
9.	Extension of HRERA registration certificate vide no.	HARERA/GGM/ REP/RC I/232 / 2017 / EXT / 179 / 2019 dated 30.12.2019
10.	Extension valid up to	12.04.2020
11.	Date of approval of building plan	01.10.2014
12.	Date of environment clearance	12.04.2016
13.	Date of commercial apartment buyer's agreement	18.01.2017 (As per page no. 28 of complaint)



14.	Unit no.	206, Second Floor, Building no. 1 (Page no. 29 of the complaint)
15.	Unit measuring	467 sq. ft. (Page no. 29 of complaint)
16.	Construction linked payment plan	Time linked payment plan (Page no. 34 of complaint)
17.	Total sale consideration (Basic sale price)	Rs. 20,27,810.52/- (As per final statement of account dated 05.02.2021 on page no. 37 of reply)
18.	Amount paid by the allottee	Rs. 18,74,098/- (As per final statement of account date 05.02.2021 on page no. 37 of reply)
19.	Due date of delivery of possession	12.04.2020 (Vide Clause 5 (iii) (b) of the Affordable housing policy- All flats in a specific project shall be allotted in one go within four months of sanction of building plans or receipt of environmental clearance whichever is later, and possession of flats shall be offered within the validity period of 4 years of such sanction/ clearance.) (Calculated from the date of environment clearance i.e., 12.04.2016) Note: - 1. Grace period is not allowed.
20.	Occupation certificate	22.05.2020



		(Page no. 30 of reply)
21.	Date of offer of possession	24.09.2020 (Page no. 33 of reply)
22.	Delay in handing over possession till offer of possession plus two months i.e., 24.11.2020	7 months 12 days

B. Facts of the complainants

3. The complainants submitted that the complainants are law abiding citizens. The respondent advertised about its new project namely 'ARAWALI HOMES' (hereinafter called as 'the project') in Damdama Lake Road, Village-Khaika, sector-4, Sohna, Haryana. The respondent painted a rosy picture of the project in its advertisements making tall claims regarding the timely delivery of the project.
4. That believing on the representations of the respondent and in the lookout for an abode for himself and his family; on 27.06.2016, the complainants booked an apartment in the project by paying an amount of Rs. 86,560/- towards the booking of the said apartment to the respondent. Thereafter, the complainants received a provisional allotment letter dated 07.10.2016 from the respondent allotting unit no. 206, second floor, tower 1, admeasuring 467 sq. ft. for a total basic sales price of Rs. 17,31,200/- (excluding EDC and IDC).
5. That on 18.01.2017, the apartment buyer's agreement was executed between the complainants and the respondent after almost six months of booking. Thereafter, the complainants contacted the respondent on several occasions regarding

wrongful demand of parking charges and some other unfair and arbitrary clauses in the agreement. Also, a clarification was sought on the development of project and the date of delivery. However, no satisfactory answer was received from the respondent.

6. That as per apartment buyer's agreement dated 18.01.2017, the respondent proposed to handover the possession of the unit in question within a period of 36 months from the date of allotment of the unit along with grace period of 6 months i.e., by 04.08.2014. However, despite a delay of more than 7 months till date, possession has not been handed over to the complainants.
7. That the complainants had paid a total sum of Rs. 17,73,666/- towards the aforesaid residential flat in the project from 27.06.2016 till now, as and when demanded by the respondent, as against a total sale consideration of Rs.17,31,200/-.
8. That in mid-2019, the complainants visited the site and were shocked to see the status of the project as no construction was going on as per the promises and representations made by the respondent. Thereafter, the complainants kept making calls, requests and through several meetings kept on inquiring as to when will the respondent deliver the project but the respondent's representatives never furnished a concrete answer to the same.
9. That due to the snail-paced work at the project site and upon receiving unsatisfactory response from the respondent, the



complainants started losing faith in the completion of the said project. Subsequently, the complainants had been informed by the respondent that the DHFL has failed in making payment to the respondent despite loan being sanctioned; resulting into which the complainants contacted the DHFL regarding non disbursement of the loan amount or due payment upon which the DHFL clearly refused to make the payment to the respondent. the complainants then contacted the respondent and informed about the clear refusal from the DHFL to make the payment upon which the respondent threatened the complainants by saying that either make the payment or the allotment shall be cancelled by the respondent.

10. That the complainants then approached the Punjab National Bank for the loan, but DHFL clearly refused to provide relevant documents to the Punjab National Bank. During the said time the respondent kept on making pressure upon the complainants to make the payment despite knowing the fact that the loan facility was made available through DHFL by the respondent only. The complainants then contacted the HDFC Bank and requested for loan upon which the HDFC Bank sanctioned the loan and demanded relevant documents which were submitted by the complainants to DHFL. The complainants then approached DHFL to obtain the documents, but DHFL agreed to provide the documents on the condition of foreclosure of the loan with DHFL. The complainants were left with no other option but to get the foreclosure of the said loan done from the DHFL and obtain the loan from HDFC Bank.

11. That the complainants never made any default in making payment to the respondent against the purchase of the said unit but due to non-payment done by DHFL to the respondent despite having sanctioned the loan, there was a delay in payment but the same was not on the part of the complainants. The respondent due to the default of the DHFL had charged heavy delayed payment interest on the complainants. The complainants were shocked at the hefty delay charges, the complainants again contacted the respondent and requested to not to charge such amount as the complainants had not made any default in making the payment rather the DHFL is at fault, but the respondent clearly refused to waive the interest on account of delayed payment.
12. That as per apartment buyer's agreement, the due date of handing over of possession is 07.04.2020 but the complainants despite having paid the entire amount of Rs. 17,73,666/- against the total sale consideration of Rs. 17,31,200/- have not received the possession of the said unit in the project even after expiration of due date of possession. So, the respondent is liable to pay delayed possession charges for every month of delay at the same interest rate at which he charged interest on account of delayed payment by the complainants but instead of admitting the default in handing over of the possession of the said unit as per agreed timeline of builder buyer agreement, the respondent is hell bent to charge interest on account of delayed payments despite

knowing the fact that the default was done on part of DHFL and not the complainants.

13. That it is further submitted that the complainants in spite of spending their hard-earned money have neither handed over the possession nor been updated about the construction at the site. The complainants are entitled to know the stage wise construction schedule of the project. Further, the respondent has failed to complete the project on time, resulting in extreme kind of financial hardship, mental distress, pain and agony to the complainants.
14. That the complainants received offer of possession vide letter dated 25.09.2020 but to the utter shock of the complainants the project was nowhere in habitable condition. The complainants in need of a place to abode approached the respondent to take possession of the flat but the respondent asked the complainants to make the payment of Rs. 1,41,708/- on account of late payment fee with tax. The complainants requested the respondent to waive the said charges as the complainants had not delayed any payment rather late payment had been made by DHFL but to no avail. The respondent denied giving the possession of the said unit to the complainants and threatened to cancel unit in case of non-payment of the demanded late payment fee of Rs. 1,41,708/-.
15. That the complainants on 20.11.2020 approached the respondent to take possession of the said unit and also requested to not charge the delay payment fee but the respondent did not pay any heed towards the request made by

the complainants and clearly refused to give possession of the unit.

C. Relief sought by the complainants:

16. The complainants have sought following relief(s):

- I. Direct the respondent to pay delayed possession charges on the principal amount paid by the complainants towards the said unit at prescribed rate of interest from the due date of possession i.e., 07.04.2020 till the actual handing over of possession.
- II. Direct the respondent to handover the possession of the unit in question to the complainants.
- III. Direct the respondent to charge delayed payment charges at the equitable rate of interest i.e., prescribed rate of interest in accordance with RERA Act, 2016 and HARERA Rules.
- IV. Direct the respondent to waive off an amount of Rs. 1,47,708/- charged by the respondent on account of interest on delayed payments made by DHFL.

17. 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 by the respondent:

18. The respondent has contested the complaint on following grounds: -

- I. That the respondent has been duly constructing the project named as "Arawali Homes" at sector 4, Sohna, Gurugram, the details of permissions and sanctions are as under:
- Licence no. 110 of 2014
 - Environment clearance vide letter dated **12.04.2016**
 - Occupation certificate vide application dated **7.10.2019** which was only granted on **22.05.2020**
 - Possession offered to complainants on **25.09.2020**
- II. That the complainants had been highly irregular in making payments of the due instalments as per the agreed terms and conditions and despite of repeated reminders. Though the project is complete the complainants instead of paying the requisite due charges on offer of possession along with outstanding interest for late payments had ventured into filing the present frivolous complaint for dishonest gains against which the respondent is well within its rights to charge holding charges and interest on outstanding payments. Thereby the respondent has been duly abiding by its obligations of construction of the project as per the agreement between the parties and the Haryana Affordable Housing Policy 2013.
- III. That though the complainants had admitted that they defaulted in the due payments. However, the complainants are trying to hide behind the finance company for the delay in payments which is neither equitable nor legal as per any agreed terms. The complainants are not entitled to any of the

reliefs claimed in the present compliant nor does the Authority has any jurisdiction to grant any such reliefs. In any case, the jurisdiction and interpretation of the clauses of the Act and the rules made therein are sub-judice before the Hon'ble Supreme Court.

- IV. That the respondent company despite difficult circumstances of national lockdown in wake of prevention of COVID 19 infection and delays on the part of government authorities in not allowing various permissions and sanctions, including sanction of revised building plans, the Real Estate Regulation and Development Act, 2016 registration, construction bans for more than 1 month every year as ordered by NGT, delay in grant of occupation certificate and other factors beyond the control of the respondent company, has duly completed the project to the best of abilities and does not in any manner gain anything in being late in completion of the project, however, the complainants despite the obligations being executory on the part of the respondent, the complainants are illegally trying to evade the payments and arm-twisting the respondent company by misusing the process of this authority thereby forcing the respondent to contest the present case and spread various false and malicious mongering statements in the minds of other allottees. Such a conduct of the complainants is highly condemnable, and the complaint of the complainants may, therefore, be dismissed with very high costs.

E. Jurisdiction of the authority:

The application of the respondent regarding rejection of complaint on ground of jurisdiction 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

19. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, 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 completed territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

20. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in *Simmi Sikka v/s M/s EMAAR MGF Land Ltd. (complaint no. 7 of 2018)* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage. The said decision of the authority has been upheld by the Haryana Real Estate Appellate Tribunal in its judgement dated 03.11.2020, in appeal nos. 52 & 64 of 2018 titled as *Emaar MGF Land Ltd. V. Simmi Sikka and anr.*

F. Finding regarding relief sought by the complainants

Delay possession charges: To direct the respondent to give the delayed possession interest to the complainants.

21. In the present complaint, the complainants intend to continue with the project and is seeking delay possession charges at prescribed rate of interest on amount already paid by him as provided under the proviso to section 18(1) of the Act which 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."

22. As per clause 5 (iii) (b) of the Affordable housing policy, the possession was to be handed over within a period of four years from the date of sanction of building plan or receipt of environmental clearance whichever is later. Clause 5 (iii) (b) of the affordable housing policy is reproduced below:

"All flats in a specific project shall be allotted in one go within four months of sanction of building plans or receipt of environmental clearance whichever is later, and possession of flats shall be offered within the validity period of 4 years of such sanction/clearance."

23. The apartment buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builders/promoters and buyers/allottee are protected candidly. The apartment buyer's agreement lays down the terms that govern the sale of different kinds of properties like

residential, commercials etc. between the buyer and builder. It is in the interest of both the parties to have a well-drafted apartment buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the right of the buyer/allottee in case of delay in possession of the unit. In pre-RERA period it was a general practice among the promoters/developers to invariably draft the terms of the apartment buyer's agreement in a manner that benefited only the promoters/developers. It had arbitrary, unilateral, and unclear clauses that either blatantly favoured the promoters/developers or gave them the benefit of doubt because of the total absence of clarity over the matter.

24. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are 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.

25. 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. The Haryana Real Estate Appellate Tribunal in **Emaar MGF Land Ltd. vs. Simmi Sikka** observed as under: -

"64. Taking the case from another angle, the allottee was only entitled to the delayed possession charges/interest only at the rate of Rs.15/- per sq. ft. per month as per clause 18 of the Buyer's Agreement for the period of such delay; whereas, the promoter was entitled to interest @ 24% per annum compounded at the time of every succeeding instalment for the delayed payments. The functions of the Authority/Tribunal 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 Tribunal 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 dated 09.05.2014 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."

26. 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., 07.04.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.

27. 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;"

28. 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 delay possession charges.

29. On consideration of the circumstances, the evidence and other record and submissions made by both the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of **clause 5 (iii) (b) of the Affordable housing policy**, the possession of unit shall be offered within the validity period of 4 years from the date of sanction of building plan or receipt of environmental clearance whichever is later. The date of sanction of building plan approval is 01.10.2014 and the date of receipt of environmental clearance is 12.04.2016, therefore the due date of handing over possession in this case is calculated from the date of receipt of environmental clearance which comes out to be 12.04.2020. The possession of the unit was offered on 24.09.2020. Accordingly, non-compliance of the mandate contained in section 11(4) (a) read with proviso to section 18(1) of the Act on the part of the respondent is established.
30. 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 22.05.2020. The respondent offered the possession of the unit in question to the complainants only on 24.09.2020, 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. This 2 month 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., 12.04.2020 till the expiry of 2 months from the date of offer of possession (24.09.2020) which comes out to be 24.11.2020.


H. Directions of the authority

31. Hence, the authority hereby passes this order and issue 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 sec 34(f) of the Act:
- (i) The respondent is directed to pay interest at the prescribed rate of 9.30 % p.a. for every month of delay from the due date of possession i.e., 12.04.2020 till the date of offer of possession i.e., 24.09.2020 plus two months i.e., 24.11.2020.
 - (ii) The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order.
 - (iii) The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. 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 respondents/promoters

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.

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

32. Complaint stands disposed of.
33. File be consigned to the registry.


Samir Kumar
(Member)


V.K Goyal
(Member)


Dr.K.K Khandelwal
(Chairman)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.04.2021

Judgement uploaded on 18.11.2021