

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

Complaint no. : 3983 of 2020  
First date of hearing : 23.12.2020  
Date of filing : 09.11.2020  
Date of decision : 07.04.2021

Nisar Ahmad Mir  
R/o: C-41, SF, BPTP Astaire Garden, Sector-  
70A, Gurugram- 122101

**Complainant**

Versus

M/s GLS Infratech Pvt. Ltd.  
Regd. Office at: JMD Pacific Square, 707, 7<sup>th</sup>  
Floor, Part-II, Sector 15 Part-2, Gurugram,  
Haryana-122001

**Respondent**

**CORAM**

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

**Chairman  
Member  
Member**

**APPEARANCE:**

None

Shri Sandeep Chaudhary

Advocate for the complainant

Advocate for the respondent

**ORDER**

1. The present complaint 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 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 complainant, 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 HARERA 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 allotment	23.09.2015 (Page no. 14 of the complaint)
14.	Date of apartment buyer's agreement	03.11.2015





		(Page no. 15 of the complaint)
15.	Unit no.	1207, 12 <sup>th</sup> Floor, Tower-04 (Page no. 16 of the complaint)
16.	Measurement of unit	476 sq. ft. (Page no. 16 of the complaint)
17.	Payment plan	Time linked payment plan
18.	Total sale consideration (Basic sale price)	Rs. 19,56,201.08/- (Page no. 34 of the reply)
19.	Amount paid by the allottee	Rs. 18,86,496.69/ (Page no. 34 of the reply)
20.	Due date of delivery of possession	12.04.2020  <b>(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.)</b>  <b>Note: - 1. Grace period is not allowed. 2. Calculated from the date of environment clearance i.e., 12.04.2016.</b>
21.	Occupation certificate	22.05.2020
22.	Date of offer of possession	05.10.2020 (Page no. 21 of the complaint)
23.	Delay in handing over possession till offer of possession plus two months i.e., 05.12.2020	7 months 23 days



**B. Facts of the complainant**

3. That on 25.10.2018, Mr. Sandeep Garg the promoter/developer/employee of the real estate project issued an advertisement and sent a mail that the issues are being under resolution with the ICICI Bank for not making payments to the builder. The issue was at builder's part as the construction was done as per the payment plan. The complainant visited the site and shocked to see that not even foundation was laid by the builder even after taking more than 50% of the payments. Further, the respondent is demanding of Rs. 14,438/- for delay in payments.
4. That legal charges of Rs. 11,800/- are being levied on the complainant. The complainant made efforts at his personal level to find out about these charges. The complainant visited the office of the respondent on 02.11.2020 but his queries about the same charges were not answered. The respondent escalated the cost of the unit to the tune of Rs. 17,612/- without giving proper proof for said escalation.
5. That VAT charges and additional VAT charges of Rs. 13,236/- are levied on the complainant without any intimation.
6. That MS charges of Rs. 15000 as an additional amount was imposed on the complainant without proper justification for this demand. The complainant was denied right to have a fair discussion for the same.
7. That maintenance charges of Rs. 22,273/- @3.90 per sq. ft. were demanded from the complainant as an advance. The advance demand of maintenance is not justified. The





maintenance is exempted for next 5 years as per rule in place. Electricity charges of Rs. 4,500/- was being charged in advance before giving actual possession or handing the keys of the unit. The EMC and labour cess of Rs. 6,004/- and Rs. 7,707/- were levied on the complainant without any justification whatsoever.

8. That offer of possession, as per the apartment buyer agreement and other communication letters given to the complainant, the possession should be handed over in June 2019, but it was offered in the month of October 2020 which is 15 months late. The complainant seeks interest @ 15% for 15 months of delayed delivery.
9. That the offer of possession was not conveyed to the complainant by any of the means be it post, mail or telephone and, neither the respondent nor anyone on his behalf responded to the complainant's calls. The respondent never intimated the complainant about offer of possession, on 02.10.2020. The complainant himself went to office of the builder/respondent. The complainant was astonished to find that offer of possession will expire on 05.10.2020 and the complainant suffered mental agony as he had short span of 3 days to make the payment.

**C. Relief sought by the complainant:**

10. The complainant has sought following relief(s):
  - (i) Restrain the respondent from asking advance electricity and maintenance charges which is Rs.

26,773/- and it should be paid as and when accrued and monthly payments.

- (ii) Direct the respondent to pay interest @ 15% as per RERA act in place on total unit cost being paid.
  - (iii) Direct the respondent to not to charge money on the unit cost increased by Rs. 17,612/- which was not informed to the respondent.
  - (iv) Direct the respondent to pay penal interest on delayed payments to be withdrawn which is Rs. 14,438.88/-
  - (v) Direct the respondent to quash demand qua VAT charges of Rs. 13,236/-
  - (vi) Direct the respondent to not to charge EMC and Labour cess of Rs. 6,006/- and Rs. 7,707/- and give clarification to the complainant.
11. 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:**

The respondent has contested the complaint on following grounds: -

12. That it was submitted that the respondent has been duly constructing the project namely, Arawali Homes at sector 4, Sohna, Gurugram in pursuance of licence no. 110 of 2014 granted by the office of the Directorate of Town & Country Planning, Haryana. The respondent has duly completed the



construction of the project in the name of Arawali Homes, Sector-4, Sohna, Distt. Gurgaon in pursuance of license no. 110 of 2014 granted by the office of Directorate, Town and Country Planning, Haryana qua which the environment clearance vide letter dated 12.04.2016 and on due completion of the construction of the project the respondent company applied for issue of occupation certificate vide application dated 7.10.2019 which was only granted on 22.05.2020. Upon which the respondent company duly offered the possession of the units to allottees including the complainant. However, the complainant instead of paying the requisite due charges on offer of possession has 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.

13. That the complainant is not entitled to any of the reliefs claimed in the present complaint nor does this 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.
14. 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 complainant despite the obligations being executory on the part of the respondent, the complainant is illegally trying to evade the payments and arm-twisting the respondent company by misusing the process of this authority 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 complainant is highly condemnable, and the complaint of the complainant 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**

15. 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**

16. 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 complainant**

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

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

18. 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."*

19. 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.

**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 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 homer 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."*

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., 07.04.2021 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 delay possession charges.



25. 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 05.10.2020. 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.
26. 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 complainant only on 05.10.2020, 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 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 (05.10.2020) which comes out to be 05.12.2020.

**H. Directions of the authority**

27. 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., 05.10.2020 plus two months i.e., 05.12.2020.
  - (ii) The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.
  - (iii) 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 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 complainant 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.

28. Complaint stands disposed of.

29. 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 30.11.2021.