

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

Complaint no. : 3854 of 2020
First date of hearing : 10.02.2021
Date of decision : 31.03.2021

1.	DSS Buildtech Private Limited Address: 506, 5 th Floor, Time Square Building, Sushant Lok-1, B-Block, Gurugram, Haryana-122002	Complainant
Versus		
1. 2.	Ruchi Chauhan Vikram Singh Mandhotra Address: Both R/o, C-804 Sispal Vihar, Sector-49, Sohna Road, Gurugram-122018	Respondents

CORAM:	
Shri Samir Kumar	Member
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Suresh Rohilla	Complainant
Abhay Jain and Rishi Jain	Respondents

ORDER

1. The present complaint dated 23.11.2020 has been filed by the complainant/promoter against the 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 19(6) and (7) of the Act



wherein it is prescribed that the allottee shall make necessary payments in the manner and within time as specified in the agreement for sale and to pay interest, at such rate as may be prescribed, for any delay in payments.

A. Unit and project related details

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

S.No.	Heads	Information
1.	Project name and location	The Melia, Sector-35, Sohna, Gurgaon
2.	Project area	17.41875 acres
3.	Nature of the project	Group housing project
4.	a) DTCP license no.	77 of 2013 dated 10.08.2013
	b) License valid up to	09.08.2024
	c) Licensee	Aarti Khandelwal & others
5.	a) RERA registered/not registered	Registered
	b) HARERA registration no.	288 of 2017 dated 10.10.2017
	c) Validity of registration	25.10.2021
6.	Building plan approved on	03.04.2018
7.	Unit no.	E-1002, 10 th Floor Tower-E [Page no. 69 of complaint]
8.	Unit measuring	1750 sq. ft.
9.	Date of execution of apartment buyer's agreement	22.12.2015 [Page 63 of complaint]
10.	Allotment letter	27.11.2015



		[Page 61 of complaint]
11.	Payment plan	Construction linked payment plan. [Page 90 of complaint]
12.	Total consideration	Rs. 99,39,625/- (without tax but including IFMSD) [As per statement of account on page no. 97 of complaint]
13.	Total amount paid by the respondent	Rs. 81,52,904/- [As per statement of account on page no. 97 of complaint]
14.	Due date of delivery of possession as per of the apartment buyer agreement [as per clause 14.1, 48 months from the date of receiving the last of approvals required for commencement of construction of project or from the date of execution of agreement whichever is later plus 180 days grace period] [Page 73 & 74 of complaint]	22.06.2020 Note: - Due date of possession is calculated from date of signing the apartment buyer agreement.
15.	Offer of possession	Not offered

B. Facts of the complaint:-

1. The complainant has submitted that the respondents/allottees booked a 3BHK flat, measuring 1750 sq. ft., in the project namely "The Melia' by way of application form, dated 28.04.2014. The basic sale price (BSP) of unit is Rs. 4704.50/- per sq. ft. plus other charges and taxes. The respondent has paid Rs.6,00,000/- as an initial booking amount. The respondent/allottees had opted for



- construction linked plan for making payments towards the flat sale consideration.
2. The respondents/allottees paid a booking amount Rs. 4,11,728/- vide RTGS on dated 30.05.2014 and other instalments total amounting to Rs.81,52,904/- including service tax. A residential unit no. E-1002 situated on the 10th floor of tower-E in the above said project was allotted to respondents/allottee vide allotment letter dated 27.11.2015. The respondents/allottees also executed an apartment buyer agreement with the complainant on 22.12.2015.
 3. That on the date of filing the present complaint, the respondents/allottees has paid only Rs. 80,99,950/- including service tax and a sum of Rs.14,89,067/- is outstanding against the respondents/allottees, on account of instalments and interest etc.
 4. The complainant has obtained all the approvals required for the development of the project. The details of the approvals obtained are already on record. The structural work of most of the towers in the project, including tower-E in which the respondents/allottees has booked the said flat, is completed.
 5. That the respondents/allottees had agreed, under the payment plan signed by him to pay instalments on time and discharge his statutory obligations created under the said agreement dated 22.12.2015. However, the respondents/allottees have failed to make payments of his respective instalments as demanded by the complainant vide demand letter dated 01.10.2018, 20.08.2019.



6. The respondents/allottees voluntarily and knowingly, failed to pay instalments despite repeated demands and reminders etc. by the complainant. The complainant also informed the respondents/allottees, through various demand/payment request letters, that home loan facility was available by leading banks/NBFCs at a good rate of interest. Further, as a goodwill gesture, the complainant offered the respondents/allottees one-time settlement to waive off all the interest charges on the condition of payment of the entire principal amount at the earliest but in vain.
7. In terms of apartment buyer agreement, the respondents /allottee is under statutory obligations to pay the instalments within the time agreed therein and also to bear 15% simple interest on dues. In terms of clause 13.3 of apartment buyer agreement the respondents / allottee have no right to withhold the due payments for any reason whatsoever. Further as per clause 14.1 of apartment buyer agreement, subject to other conditions thereof the tentative timeline given was 48 months with a grace period of 180 days for the date of receiving the last approvals required for commencement of construction. As per clause 14.2 of apartment buyer agreement, the aforesaid period of delivery of possession get extended on default in payment.
8. The complainant had commenced the construction of the said project on 01.12.2016 after receiving the approval of 'consent to establish" dated 12.11.2016 from the Haryana State Pollution Control Board. The complainant is fully



committed to hand over the possession of apartments/flats to the buyers well within the promised time-period.

9. The respondents/allottees have been continuously making defaults in making payments, voluntarily and knowingly, of his instalments and other dues. As per last payment request dated 20.08.2019 sent by the complainant to respondents / allottee an amount of Rs.12,55,850/- including GST was due and payable by the respondents. Also, an amount of Rs.2,33,217/- was due and payable on account of interest on the previous outstanding instalments.
10. That the respondents/allottees are obligated to pay and complainant is entitled to recover the due amount along with interest agreed in terms of the apartment buyer agreement under section 19 (6) and (7) of the Act and rule 15 of the rules.
11. It is submitted that under section 31 (1) of the Act, this authority is empowered to adjudicate the present complaint being filed by the complainant as the promoter of the project against the respondents being allottee of a unit in the above said project.

C. Relief sought by the complainant: -

12. The complainant has sought following reliefs:
 - i. Direct the respondent to make payment of their current outstanding and future instalments on time as agreed under the apartment buyer agreement.
 - ii. Direct the respondent to make payment of outstanding interest.



- iii. The entitlement of compensation to the respondent in event of delay in handing over the possession of unit may kindly be struck off if he makes any delay in payment of instalment and interest as per apartment buyer agreement.

D. Reply by the Respondent

13. The respondent has contested the complaint on following grounds:

- i. The respondents submitted that they have paid a total of Rs.81,52,904/- till September, 2018 out of the total consideration of Rs.99,39,625/-. The balance of Rs.17,86,721/- is payable as last three instalments, as per the payment plan, 'Rs.4,99,144/- on casting of internal plaster' 'Rs.5,99,144/- on completion of flooring' and 'Rs.5,86,639/- on offer of possession'. As per the submissions of the complainant, at the time of filing the complaint, the project is complete only around 51% percent whereas the complainant has collected more than 81% of the total cost of the apartment. The respondents paid a sum of Rs.4,11,728/- as booking amount on 26.04.2014.
- ii. The respondents paid a total sum of Rs.16,46,913/- till February, 2016, duly acknowledged by the complainant. But the complainant failed to execute the apartment buyer agreement even after repeated requests from the respondents. The complainant violated section 13 of the Act, 2016 by taking more than



- 10% cost of the apartment before the execution of the apartment buyer agreement. The total cost of the apartment as per the agreement is Rs.99,39,625/- including EDC, IDC, Club Membership, PLC, EEC/FFC, car parking, etc. while the complainant had collected a total sum of ₹16,46,913/-, more than 16% of the total cost of the apartment till February, 2016.
- iii. The apartment buyer agreement was executed on 22.12.2015 for apartment no. E-1002, tenth floor, tower E, The Melia, Sector 35, Sohna Gurugram. The date of possession as per the agreement is 22.12.2019. The respondents have paid a total of Rs.81,52,904/- till September, 2018, as and when demanded by the complainant. But the complainant has failed to timely construct the project and hand over the possession of the apartment to the respondents.
- iv. The respondents have approached the complainant and pleaded for delivery of possession of their apartment as per the agreement on various occasions. The complainant did not reply their letters, emails, personal visits, telephone calls, seeking information about the status of the project and delivery of possession of their apartment, thereby the complainant violated Section 19 of the Act, 2016.
- v. The complainant utilised funds collected from the respondents and other buyers for its own good in other projects, being developed by the complainant.



- vi. The complainant/promoter was mandated to handover the possession of the apartment of the respondents/allottees within 48 months i.e., by 22.12.2019. Whereas, even in January 2021 the project is not near completion.
- vii. The project at present is around 51% complete, in no circumstance the demand of ₹12,55,850/- be due to be payable by the respondents/allottees on 20.08.2019. The complainant/promoter was mandated to handover the possession of the apartment of the respondents/allottees within 48 months i.e., by 22.12.2019.
- viii. The complainant/promoter and respondents/allottees have executed an apartment buyer agreement, which is the governing and binding instrument towards the rights, duties and functions of both the parties. But, as a matter of fact, after the implementation of the Act of 2016, the interest payable on delay payments as well as on delay in handing over possession has to be assessed equitably, which in the state of Haryana, as prescribed under the rules, 2017 is MCLR+2%. Therefore, both the parties are bound by the statutory obligations of the agreement in consonance with the RERA Act, 2016.
- ix. As per the submissions of the complainant, at the time of filing the complaint, the project is complete only around 51% percent whereas the complainant has collected more than 81% of the total cost of the

apartment. Therefore, the relief sought by the complainant is liable to be dismissed.

E. Findings of the authority

14. For the adjudication of present complaint, several issues arise, and they are dealt in the succeeding paras of this order

E.1 Issue: Whether the respondent has violated the provisions of section 19(6) read with section 19(7) of the Act?

15. As per the observations of authority, the total sale consideration of the apartment is Rs.99,39,625/-. The respondent/allottee has paid only Rs. 81,52,904 /- including service tax and sum of Rs.12,55,850/- is still outstanding which in spite of the complainant's demand letters has not been paid by the respondents. As per clause 11.1 of apartment buyer agreement, it is the obligation of allottee to make timely payments for the total sale consideration. Therefore, the respondents/allottees are in contravention of section 19(6) and (7) of the Act. Clause 11.1 of apartment buyer agreement is reproduced as under:

11. TIME IS OF THE ESSENCE: BUYER'S OBLIGATIONS

"11.1.1 Time is the essence with respect to the obligations of the Buyer to pay the Total Sale Consideration as provided in Schedule-III on or before the due date(s) as may be prescribed. It is clearly agreed and understood by the Buyer that except for a demand notice for payments, the Company shall not be required to remind the Buyer for payments due



as per the Payment Plan on for performance of any other obligations of the Buyer in terms thereof."

16. Therefore, authority is satisfied that the respondent is in contravention of section 19(6) and (7) of the Act. The relevant provision of the Act has been reproduced below:

19. Rights and duties of allottees:

(6) Every allottee, who has entered into an agreement or sale to take an apartment, plot or building as the case may be, under Section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground, rent, and other charges, if any.

(7) The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section(6).

That the Hon'ble High Court of Bombay in the matter titled ***Neelkamal Realtors Suburban Pvt. Ltd. And Anr vs. Union of India*** has already held that RERA strikes the balance between the promoter and allottees, the relevant para of judgement is reproduced herein below:

"In the case of Cellular Operations Association of India and ors. Vs. Telecom Regulatory Authority of India and ors. (Supra), the Supreme Court held that there cannot be any dispute in respect of settled principles governing provisions of Articles 14, 19(1)(g) read with Article 19(6). But a proper balance between the freedom guaranteed and the social control permitted by Article 19(6) must be struck in all cases. We find that RERA strikes balance between rights and obligations of promoter and allottees. It is a beneficial legislation in the larger public interest occupying the field of regulatory nature which was absent in this country so far.



E.2 Issue – What should be the rate of interest to be paid by the respondents/allottees?

17. It has been contended by the complainant that as per apartment buyer agreement, the respondent/allottee is under statutory obligations to pay the instalments within the time agreed therein and also to bear 15% simple interest on dues. The relevant clause 11.1.2 of standard apartment buyer agreement is reproduced below:

"11.1.2 For any delay in making any payment in terms hereof, simple interest @15% shall be chargeable. The company shall also be within its rights to decline to execute the conveyance deed and refuse to transfer the apartment in the name of any other buyer unless all payments are fully paid."

18. However, section 19(6) and (7) of the Act states that the allottee shall make necessary payments in the manner and within time as specified in the agreement for sale and to pay interest, at such rate as may be prescribed, for any delay in payments 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.



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.

19. 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., 31.03.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e. 9.30% per annum.
20. 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:

S.2"(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."

21. Therefore, the respondents shall be charged at the prescribed rate i.e., 9.30% per annum by the complainant/promoter which is the same as is being granted to complainant/promoter in case of delayed possession charges.
22. On consideration of the documents available on record and submissions made by the party regarding contravention of provisions of the Act, the authority is satisfied that the respondents are in contravention of the section 19(6) and (7) of the Act. The counsel for the respondents has raised a contention that they had already paid 90% of the consideration amount whereas the project is only 51 to 60% complete. However, the complainant has not given them possession on the due date of possession i.e. 22.6.2020. As such, respondents are also entitled for delayed possession charges under section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 at the prescribed rate of interest i.e. 9.30% per annum for every month of delay on the amount paid by the respondents with the complainant from the due date of possession till the handing over of physical possession. As, such, the respondent is given liberty to come



to the authority at the time of handing over of possession and grant of delayed possession charges.


23. By virtue of clause 11.1 of the agreement executed between the parties on 22.12.2015, it is the buyer's obligation to timely give payments for the total sale consideration. The respondent has paid only Rs. 81,52,904 /- out of Rs. 99,39,625/- which is the total sale consideration. Accordingly, it is the failure of the respondents/allotees to fulfil its obligations and responsibilities as per the agreement to make timely payments to the promoter, accordingly, the non-compliance of the mandate contained in section 19(6) and (7) of the Act on the part of the respondent is established.

F. Directions issued by the Authority

24. 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):-
- a. The respondents/allotees shall make the requisite payments as per the provisions of section 19(6) and (7) of the Act.
 - b. The respondents/allotees shall be charged interest at the prescribed rate of interest that is at

the rate 9.30% per annum by the complainant/promoter which is same as is being granted to the complainant/promoter in case of delayed possession.

25. Complaint stands disposed of.
26. File be consigned to the registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 31.03.2021


(Vijay Kumar Goyal)

Member

Judgement uploaded on 08.12.2021.