

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

Complaint no. : 473 of 2020
First date of hearing : 03.04.2020
Date of decision : 12.10.2021

1. Sakshi Sharma
2. Vineet Sharma
Both RR/o: L-49D, First Floor, Block L,
Saket, New Delhi-110017.

Complainants

Versus

M/s Emaar MGF Land Ltd.
Office: 306-308, Square One, C-2,
District Centre, Saket, New Delhi-110017.

Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Nilotpal Shyam
Shri J.K. Dang

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint dated 19.02.2020 has been filed by the complainants/allottees 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 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	"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	Registered in two phases 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 68 of reply]
8.	Date of booking	31.10.2018 [Page 95 of complaint]
9.	Provision allotment letter dated	29.11.2018 [Page 38 of complaint]



10.	Unit no.	IG-04-1403, 14 th floor, tower/ building no. 04 [Page 57 of complaint]
11.	Unit measuring	1228.17 sq. ft. (Carpet area) 2000 sq. ft. (Super area) [Page 57 of complaint]
12.	Date of execution of buyer's agreement	17.01.2019 [Page 49 of complaint]
13.	Payment plan	Time linked payment plan [Page 95 of complaint]
14.	Total consideration as per statement of account dated 27.05.2020	Rs.1,19,36,400/- [Page 62 of reply]
15.	Total amount paid by the complainants as per statement of account dated 27.05.2020	Rs.1,19,36,400/- [Page 63 of reply]
16.	Due date of delivery of possession as per clause 7(a) of the said agreement i.e. the company shall offer the possession of the unit to the allottee on or before 31.12.2018 or such time as may be extended by the competent authority. [Page 65 of complaint]	31.12.2018
17.	Date of offer of possession to the complainants	25.10.2019 [Page 108 of complaint]
18.	Delay in handing over possession w.e.f. 21.12.2018 till 25.12.2019 i.e. date of offer possession (25.10.2019) + 2 months	11 months 25 days

B. Facts of the complaint

3. The complainants have made followings submissions in the complaint:

- i. That the respondent through their representative had approached them and represented that the respondent's residential project namely "Imperial Gardens" located at Sector-102, Dwarka

Expressway, Gurugram, Haryana will effectively serve the residential purpose of complainants and their family and had the best of the amenities through a Diwali offer. In the sales presentation, the respondent company made lucrative promises selling the flats but was unable to fulfill the same. The respondent company made promise to provide 'Urban Ladder Vouchers' worth Rs.3,00,000/-. But at the time of giving possession once the complainants demanded the same, respondent company refused to provide any such voucher rather offer to give vouchers of Livspace through the mail dated 02.06.2020.

- ii. That based on the aforementioned representation and enquiries made, the complainants started payment from 22.10.2018 pursuant to which allotment letter was issued by the respondent on 29.11.2018 for allotment of unit no. IG-04-1403 proposed to be built at 14th floor in the said project. Subsequently, both the parties entered into buyer's agreement on 29.11.2018 (*sic* 17.01.2019). All the clauses of said buyer's agreement are not in accordance with the mandate as prescribed under model agreement of the rules made under the Act. It is submitted that said clauses of buyer's agreement to the extent of incongruency with the Act read with relevant rules and regulations shall not be binding on the complainants.

iii. That as per the buyer's agreement, the respondent agreed to sell the said unit having carpet area of 1228.17 sq. ft. for an amount of Rs.1,06,89,000/- which includes basic sale price, car parking charges, EDC and IDC, preferential location charges and IFMS etc. As per clause 7(a) of the buyer's agreement, the possession date for the said unit was agreed to be 31.12.2018. Clause 12 of the buyer's agreement stipulates that the respondent company, if failed to deliver the possession of the said unit within the stipulated time frame and subject to the force majeure conditions, shall pay compensation for the entire period till the date of handing over the possession in accordance with the Act. The complainants made a total payment of Rs.1,05,68,241/- towards the said unit in accordance with the demand raised by the respondent company. Despite the said payments, the respondent failed to deliver the possession in agreed timeframe (i.e., December 2018) for reasons best known to them and the respondent never bothered to intimate reasons and reasoning for the delay to the complainants. Therefore, the respondent has breached the sanctity of the agreement to sell i.e. buyer's agreement. The offer of possession was made to the complainants by the respondent on 25.10.2019. The unit was booked by the complainants on the false presentation that the unit will be available by 31.12.2018 but the complainants received the offer of possession through letter dated 25.10.2019.

iv. That there is 10 months of unexplained delay in handing over the possession by the respondent to the complainants without any sign of them meeting the future deadline as provided to the concerned authority in accordance with law. Therefore, the complainants have genuine grievance which require the intervention of the hon'ble authority in order to do justice with them. Hence, this complaint.

C. Relief sought by the complainants

4. The complainants are seeking the following relief:

i. Direct the respondent to pay interest at prescribed rate for the delayed period of handing over the possession calculated from the date of delivery of possession as mentioned in the buyer's agreement to the actual date of handing over the possession on the amount paid by the complainants towards the unit no. IG-04-1403.

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 has contested the complaint on the following grounds:

i. That the complainants have filed the present complaint seeking compensation and interest for alleged delay in delivering possession of the apartment booked by the complainants. 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.

ii. The respondent denied that the respondent had made any "lucrative promises" or incorrect representations to the complainants. The respondent denied that the complainants were promised vouchers from any specific company/entity. The buyer's agreement, which supersedes the brochure in so far as the contractual obligations between the parties is concerned, does not specify any particular brand of vouchers to be provided to the complainants, only the value thereof. Furthermore, the vouchers from Urban Ladder worth ₹ 3 lakhs, were subject to availability and in lieu thereof, the respondent duly offered to give vouchers of Livespace instead. Also, it is ridiculous on the part of the complainants to allege that any email was sent by the respondent on 02.06.2020 when the complaint itself has been instituted on 24.01.2020 (sic 19.02.2020). Moreover, assuming without admitting any truth in the allegations levelled by the complainants, it is respectfully submitted that there is no violation of the Act/Rules or any provision of the buyer's agreement by the respondent.

iii. That the provisional allotment letter was issued in favour of the complainants on 29.11.2018. However, the buyer's agreement was executed by the parties on 17.01.2019 and not on 19.11.2018 as alleged in the corresponding para of the complaint. The complainants have themselves admitted that allotment letter had

- been issued on 29.11.2018, therefore, it is not possible that the buyer's agreement was executed before issuance of the allotment letter.
- iv. That the complainants were provisionally allotted apartment no. IG-04-1403, located on the 14th floor in tower/building no. 04, having carpet area of 1228.17 sq. ft, balcony areas admeasuring 245.10 sq. ft., having super area of 2000 sq. ft. That the buyer's agreement had been sent to the complainants for execution in the first week of December 2018 itself. However, the complainants delayed execution of the buyer's agreement by seeking unnecessary 'clarifications' and also by requesting for execution of the buyer's agreement in the month of January 2019 due to non-availability of complainant no. 2. Thereafter, buyer's agreement was executed between the parties on 17.01.2019. The statement of account reflects the payments made by the complainants and accrued delayed payment interest as on 27.05.2020.
- v. That the respondent had registered the project under the provisions of the Act. The project had been registered vide no. 208 of 2017 and it is valid till 31.12.2018. However, due to unavoidable circumstances, the respondent was constrained to seek extension of registration and thereafter, the validity of registration has been extended up till 31.12.2019. That the completion of the project was delayed by the contractor, Capacite Infraprojects Ltd. despite the best efforts and reminders from the respondent. On account of the delay by the contractor, the respondent was constrained to apply for extension of registration of the project under the Act. However,

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 complainants vide letter dated 25.10.2019. The complainants were 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 complainants. However, the complainants did not come forward to take possession of the apartment and also failed to remit the balance payment due and payable by the complainants, despite reminders for possession.
- vii. That the contractual relationship between the complainants and the respondent is governed by the terms and conditions of the buyer's agreement dated 17.01.2019. Clause 7 of the buyer's agreement provides that subject to force majeure conditions and delay caused on account of reasons beyond the control of the respondent, and subject to the allottee not being in default of any of the terms and conditions of the same, the respondent expects to deliver possession of the apartment within a period of 60 days

from the date of issuance of the occupation certificate by the competent authority. The occupation certificate was issued by the competent authority on 17.10.2019 and the offer of possession was made a week later, i.e. on 25.10.2019. Thus, there is no delay in so far as the respondent is concerned.

viii. That the complainants have admittedly purchased the apartment in question as a speculative investment. The complainants never intended to reside in the said apartment and have booked the same with a view to earn a huge profit from resale of the same. In the entire complaint, there is not even a mention that the complainants had booked the apartment in question for their own use. It is for this reason that the complainants are reluctant to take possession of the same. The complainants are investors who never had any intention to buy the apartment for their own personal use and have kept on intentionally avoiding the performance of their contractual obligations and have now filed the present complaint on false and frivolous grounds. The complainants are not "allottees" under the act but investors and thus the present complaint is not maintainable at the complainant's behest.

ix. That without admitting or acknowledging in any manner the truth or legality of the frivolous and false allegations levelled by the complainants and without prejudice to the contentions of the respondent that there has been no delay in offering possession of the apartment to the complainants, it is respectfully submitted 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 a contractor on 17.09.2013 operating under the name and style of Capacite Infraprojects Ltd., for construction and implementation of the project in question. The said contractor had represented and claimed that it has the necessary resources, competence, capacity, capability and expertise for undertaking, performing, effectuating and completing the work undertaken by it. 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. The respondent was constrained to issue several notices, requests etc. to the said contractor to expedite progress of the work at the project site but to no avail. The said contractor consciously and deliberately chose to ignore the legitimate and just requests of the respondent on one pretext or the other and defaulted in carrying out the work in a time bound manner. Therefore, no fault or lapse can be attributed to the respondent in the facts and circumstances of the case.

- x. 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, had diligently and

earnestly pursued the development of the project in question and had constructed the project in question as expeditiously as possible. Thus, the allegations levelled by the complainants qua the respondent are totally baseless and do not merit any consideration by this hon'ble authority. 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 complainants at a later stage.

F. Findings on the objections raised by the respondent

F.I Objection regarding entitlement of DPC on ground of complainants being investor

11. The respondent submitted that the complainants never intended to reside in the unit in question and had booked it with a view to earn huge profit from resale of the same. The respondent submitted that the complainants are investors and not consumers/allottees, thus, the complainants are not entitled to the protection of the Act and thus, the present complaint is not maintainable.
12. The authority observed that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims and objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that under section 31 of the Act, any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or

regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement, it is revealed that the complainants are allottees/buyers and have paid total price of Rs. 1,19,36,400/- to the respondent/promoter towards purchase of the said unit in the project in question. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

13. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between respondent and complainants, it is crystal clear that the complainants are allottee as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the complainants-



allottees being investors is not entitled to protection of this Act stands rejected.

G. Findings of the authority

G.I Delay possession charges

14. **Relief sought by the complainants:** Direct the respondent to pay interest at prescribed rate for the delayed period of handing over the possession calculated from the date of delivery of possession as mentioned in the buyer's agreement to the actual date of handing over the possession on the amount paid by the complainants towards the unit no. IG-04-1403.

15. In the present complaint, the complainants intend to continue with the project and are 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."

16. Clause 7(a) of the buyer's agreement dated 17.01.2019 provides time period for handing over the possession and the same is reproduced below:

"7. POSSESSION AND SALE DEED

(a) Within 60 (sixty) days from the date of issuance of Occupation Certificate by the concerned Authorities, the Company shall offer the possession of the unit to the Allottee. Subject to Force Majeure and fulfillment by the Allottee of all the terms and conditions of this Agreement including but not limited to timely payment by the Allottee of the Total Price payable in accordance with Payment Plan Annexure-III, along with stamp duty, registration and incidental charges and other charges in connection thereto due and payable by the Allottee and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company shall offer the possession of the Unit to the Allottee on or before 31-12-2018 or such time as may be extended by the competent authority."

17. **Due date of handing over possession:** As per clause 7(a) of the buyer's agreement, the respondent was under obligation to offer the possession of the unit to the allottee on or before 31.12.2018 or such time as may be extended by the competent authority.
18. The counsel of the respondent submitted that the project in question is registered vide no. 208 of 2017 and the same was initially valid till 31.12.2018. However, due to unavoidable circumstances on account of delay by the contractor, the respondent was constrained to seek extension of registration and the same was extended till 31.12.2019. The occupation certificate was granted by the competent authority on 17.10.2019 and the possession was offered on 25.10.2019. Therefore, there is no delay in offering possession in so far as respondent is concerned.
19. The authority is of the view that the promoter is obliged under the proviso to section 3 of the Act to get the on-going project registered, for a certain time period, where the completion certificate has not been



issued. At the time of filing application for registration, promoter must disclose the end date [under section 4(2)(1)(C)] within which he shall be able to complete the development of the project. It is worthwhile to note that, as mentioned in the application, the development of the real estate project should be completed in all means within the stipulated end date but if the promoter fails to complete the development of the project within the end date, then as per section 6 of the Act, the promoter can apply for extension of the end date for a further period of 1 (one) year. Furthermore, the extension of registration certificate is without prejudice to the rights of allottees as per proviso to section 18(1) of the Act regarding delay possession charges from the due date of possession till the actual handing over of possession.

20. In the light of the above clause of the buyer's agreement, the promoter was under obligation to handover possession of the subject unit by 31.12.2018 as mentioned in the registration certificate and buyer's agreement. The respondent was unable to handover the possession as there was a delay in construction on part of the contractor. Since, the construction of the said project was not complete within the time frame as mentioned in the registration certificate consequently, the respondent applied for extension of registration. The arrangement between the contractor and the respondent w.r.t construction of the said project is an internal and an independent decision of the respondent and shall in no means hinder the rights of the allottees

provided under section 18 of the Act. Therefore, it can be concluded that the due date of handing over possession is 31.12.2018 as mentioned in the registration certificate and clause 7(a) of the buyer's agreement. In other words, the respondent was liable to handover possession by 31.12.2018 and the respondent has failed to handover possession by the said due date.

21. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prescribed rate. 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.

22. 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.

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 complainants for delay in making payments:** The respondent contended that the complainants have defaulted in making timely payments of the instalments as per the payment plan, therefore, they are liable to pay interest on the outstanding payments.

25. The authority observed that 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;"*

26. 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.

27. On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 7(a) of the buyer's agreement executed between the parties on 17.01.2019, possession of the booked unit was to be delivered on or before 31.12.2018. Occupation Certificate has been received by the respondent on 17.10.2019 and the possession of the subject unit was offered to the complainants on 25.10.2019. 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 complainants as per the terms and conditions of the buyer's agreement dated 17.01.2019 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 17.01.2019 to hand over the possession within the stipulated period.
28. 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 complainants only

on 25.10.2019. 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. These 2 months' 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. 31.12.2018 till the expiry of 2 months from the date of offer of possession (25.10.2019) which comes out to be 25.12.2019.

29. 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 complainants are entitled to delay possession at prescribed rate of interest i.e. 9.30% p.a. w.e.f. 31.12.2018 till 25.12.2019 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

H. Direction 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 complainants from due date of possession i.e. 31.12.2018 till 25.12.2019 i.e., expiry of 2 months from the date of offer of possession 25.10.2019. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per rule 16(2) of the rules.
- ii. 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 complainants /allottees 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.
- iii. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement. The respondent shall not demand/claim holding charges from the complainants/allottees at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble



HARERA
GURUGRAM

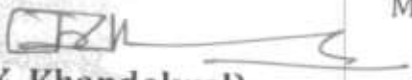
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Supreme Court in civil appeal nos. 3864-3889/2020 decided on
14.12.2020.

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 16.12.2021.

HARERA
GURUGRAM