

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

Complaint no. : 474 of 2020

First date of hearing : 03.04.2020

Date of decision : 12.10.2021

1. Bharat Kumar
2. Ashima Mahajan
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 20.02.2020 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/ registered	not 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 80 of reply]
8.	Provision allotment letter dated	03.01.2019 [Page 21 of complaint]
9.	Unit no.	IG-03-0701, 7 th floor, tower/ building no. 03 [Page 38 of complaint]

10.	Unit measuring	1255.73 sq. ft. (Carpet area) 2025 sq. ft. (Super area) [Page 38 of complaint]
11.	Date of execution of buyer's agreement	17.01.2019 [Page 30 of complaint]
12.	Payment plan	Time linked payment plan [Page 77 of complaint]
13.	Total consideration as per statement of account dated 22.04.2020	Rs.1,27,19,636/- [Page 65 of reply]
14.	Total amount paid by the complainants as per statement of account dated 22.04.2020	Rs.1,13,37,425/- [Page 66 of reply]
15.	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 46 of complaint]	31.12.2018
16.	Date of offer of possession to the complainants	05.11.2019 [Page 90 of complaint]
17.	The complainants have taken possession vide undertaking dated	15.11.2019 [Page 83 of reply]
18.	Delay in handing over possession w.e.f. 31.12.2018 (due date of handing over possession) till 15.11.2019 (date of handing over of possession)	10 months 15 days

B. Facts of the complaint

3. The complainants have made following 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 when the complainants demanded the same, the respondent company refused to provide any such voucher rather offered to give vouchers of Livspace through mail dated 29.01.2020. Further, the respondent company in subsequent mail one month later informed complainants that they are still in process of procuring the vouchers from the company. Therefore, it is clear that the respondent had no intention to fulfill their promises as stated in their presentation.

- ii. That based on the aforementioned representation and enquiries made, the complainants started payment from 25.10.2018 pursuant to which allotment letter was issued by the respondent on 03.01.2019 for allotment of unit no. IG-03-0701 proposed to be built at 7th floor in the said project. Subsequently, both the parties entered into buyer's agreement on 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 1255.73 sq. ft. for an amount of Rs.1,06,26,981/- 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.1,03,86,437/- 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 05.11.2019.

- 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. The hon'ble authority granted the registration certificate to the respondent vide no. 208 of 2017 dated 15.09.2017 wherein the said registration was valid till 31.12.2018. However, the respondent company failed to handover the possession by the said date. 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 reliefs:
 - 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-03-0701.
5. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

D. Reply filed by the respondent

6. The respondent had contested the complaint on the following grounds:
- i. The complainants have filed the present complaint seeking interest for alleged delay in delivering possession of the apartment booked by the complainants. It is respectfully submitted that complaints pertaining to refund, compensation and interest 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. That the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. It is further submitted that merely because the Act applies to ongoing projects which are registered with the authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainants for seeking interest cannot be called in to aid in derogation and ignorance of the provisions of the buyer's agreement. The interest is compensatory in nature and cannot be granted in derogation and ignorance of the provisions of the buyer's agreement. The interest demanded by the complainants is beyond the scope of the buyer's agreement. The complainants cannot demand any interest beyond the terms and conditions incorporated in the buyer's agreement.
 - iii. The respondent denied that any lucrative promises had been made by the respondent to the complainants. The respondent denied that the respondent had made any promise to the complainants to provide any Urban Ladder vouchers worth Rs.3,00,000/- to the

complainants. It is denied that at the time of handing over of possession of the said unit, the respondent was supposed to provide vouchers from Urban Ladder to the complainants. Email dated 29.01.2020 sent by the respondent to the complainants is a matter of record. That as on date, vouchers for Livespace have already been provided to the complainants by the respondent. The complainants had already collected the aforesaid vouchers on 20.03.2020 from the respondent.

- iv. That the complainants were provisionally allotted apartment no. IG-03-0701 in the project vide allotment letter dated 03.01.2019. The complainants consciously and wilfully opted for a subvention plan for remittance of the sale consideration for the said unit and further represented to the respondent that the complainants would remit every instalment on time as per payment schedule. The respondent had no reason to suspect the bona-fide of the complainants. However, right from the beginning, the complainants were irregular as far as payment of instalments were concerned. The respondent was compelled to issue demand notices, reminders etc. calling upon the complainants to make payment of outstanding amounts payable by him under the payment plan/ instalment plan opted by them.
- v. That the multiple payment reminder letters and notices had been got sent to the complainants by the respondent clearly mentioning the amount that was outstanding and the due date for remittance of the respective amounts as per the schedule of payments, requesting the complainants to timely discharge their outstanding

financial liability but to no avail. The complainants consciously and maliciously chose to ignore the payment request letters, reminders and notice issued by the respondent and defaulted in making timely payments of the instalments which was an essential, crucial and an indispensable requirement under the buyer's agreement. 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 and further causes enormous business losses to the respondent. The complainants chose to ignore all these aspects and wilfully defaulted in making timely payments. That the respondent despite defaults of several allottees earnestly fulfilled its obligations under the buyer's agreement and completed the project as expeditiously as possible in the facts and circumstances of the case. Therefore, there is no equity in favour of the complainants.

- vi. That the rights and obligations of complainants as well as respondent are completely and entirely determined by the covenants incorporated in the buyer's agreement dated 17.01.2019 which continues to be binding upon the parties thereto with full force and effect. It is submitted that as per clause 7 of the buyer's agreement, the time period for delivery of possession was 60 days from the date of issuance of occupation certificate by the concerned authorities subject to the allottee(s) having strictly complied with all terms and conditions of the buyer's agreement and not being in default of any provision of the buyer's agreement

including remittance of all amounts due and payable by the allottee(s) under the agreement as per the schedule of payment incorporated in the buyer's agreement. It has also been provided therein that the date for delivery of possession of the unit would stand extended in the event of occurrence of the facts/reasons beyond the power and control of the respondent.

- vii. That clause 13 of the buyer's agreement (read with clause 16) further provides that compensation for any delay in delivery of possession shall only be given to such allottees who are not in default of the agreement and further have not defaulted in payment as per the payment plan annexed with the agreement. The complainants have defaulted in payment of instalments as per the schedule of payment incorporated in the buyer's agreement and therefore the complainants are not entitled to any compensation under the buyer's agreement.
- viii. That the respondent had submitted an application dated 11.02.2019 for grant of occupation certificate to the concerned statutory authority. The occupation certificate thereafter was granted on 17.10.2019. It is submitted that once an application for issuance of occupation certificate is submitted before the concerned competent authority, the respondent ceases to have any control over the same. The grant of occupation certificate is the prerogative of the concerned statutory authority and the respondent does not exercise any control over the matter. Therefore, the time period utilised by the concerned statutory authority for granting the occupation certificate needs to be

necessarily excluded from the computation of the time period utilised in the implementation of the project in terms of the buyer's agreement. As far as respondent is concerned, it has diligently and sincerely pursued the development and completion of the project in question.

ix. That the respondent had offered interim possession of the unit in question through letter of offer of possession dated 05.11.2019 to the complainants. The complainants were called upon to remit balance payment 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 allottee. However, the complainants approached the respondent demanding compensation alleging delay in delivery of possession of the unit in question. The respondent transparently and fairly conveyed to the complainants that they are not entitled to any compensation on account of defaults of various clauses of the buyer's agreement committed by them.

x. That the project of the respondent is no longer an "ongoing project" under the Act as the same had been registered under the Act and the rules vide registration no. 208 of 2017 dated 15.09.2017 and the same is valid till 31.12.2018. That the respondent had applied for extension of the registration certificate and consequently, the validity of registration of the said project with this honourable authority had been extended till 31.12.2019. The respondent is no longer required to apply for any extension as the respondent was already in receipt of occupation certificate dated 17.10.2019.

- xi. That the respondent had 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. 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.
- xii. That all the demands raised by the respondent are strictly in accordance with the terms and conditions of the buyer's agreement duly executed between the parties. There is no default or lapse on the part of the respondent. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainants are totally baseless. Thus, it is most respectfully submitted that the present application deserves to be dismissed at the very threshold.
7. The respondent has filed **written arguments** on 05.10.2020. The respondent submitted that the complainants have alleged in the



complaint filed by them that physical possession of the aforesaid apartment has not been delivered in time by the respondent in accordance with clause 7 (a) of the buyer's agreement dated 17.01.2019. It has been mentioned by the complainants that in terms of aforesaid clause it was obligatory upon the respondent to offer the possession of the unit on or before 31.12.2018. The complainants have also admitted that the respondent was entitled to avail extension of time period, if any, by the competent authority. That the due date of delivery of possession of the unit in question is 01.03.2021 and the same had been mentioned in the payment plan voluntarily chosen by the complainants. The keys to the unit in question have already been delivered to the complainants on 18.01.2020 for carrying out the fit-out work in the unit in question. It was submitted that final letter of offer of possession would be issued to the complainants upon payment of outstanding amount due and payable by the complainants. It was submitted that the complaint preferred by the complainants was premature and deserves to be dismissed.

8. The respondent submitted that the complainants and the respondent are bound by terms and conditions of the buyer's agreement and the respondent put reliance in this regard upon various citations: **2000(1) Apex Court Journal 388, AIR 1996 SC 2508, AIR 1990 SC 699**. The respondent submitted that this hon'ble authority does not have jurisdiction to legally direct levying of interest and in this regard, the

respondent has put reliance on order dated **02.05.2019** passed by **Justice Darshan Singh (Retd.) Chairman, Haryana Real estate Appellate Tribunal, Chandigarh.**

9. The respondent further submitted that the liability to pay interest imposed on the developer is in the nature of compensation. It has further been held that any determination of dispute pertaining to payment of interest under sections 12, 14, 18 and 19 is to be adjudicated by the adjudicating officer as per section 71 of the Act. While supporting this contention, the respondent has place reliance on **Neelkamal Realtors Suburban Pvt. Ltd. and anr. Versus Union of India and ors. [2018(1) RCR (Civil) 298].**
10. That no compensation/interest of any nature deserves to be granted for the span of time commencing from the date of application for grant of the occupation certificate till the issuance thereof. The said period deserves to be exempted for all intents and purposes. In light of legal and factual position submitted above, it is evident that there is no merit in the grievances raised in the present complaint qua the respondent. The complainants are not entitled to any relief. The present complaint is liable to be dismissed with costs.
11. 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

12. 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

13. 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

14. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the

allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

15. So, in view of the provisions of the Act quoted above, 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 jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act and provisions of the Act are not retrospective in nature

16. The respondent raised an objection that the provisions of the Act are not retrospective in nature and the provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into force of the Act. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted

harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/ particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of *Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)* which provides as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.....

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

17. Also, in appeal no. 173 of 2019 titled as *Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya*, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the

agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

18. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the buyer's agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of the Act, the rules and regulations made thereunder and are not unreasonable or exorbitant in nature.

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

19. As far as contention of the respondent with respect to the exclusion of time taken by the competent authority in processing the application and issuance of occupation certificate is concerned, the authority observed that the respondent has applied for grant of occupation certificate on 11.02.2019 and thereafter vide memo no. ZP-845/AD(RA)/2019/25815 dated 17.10.2019, the occupation certificate

has been granted by the competent authority under the prevailing law. The authority cannot be a silent spectator to the deficiency in the application submitted by the promoter for issuance of occupancy certificate. It is evident from the occupation certificate dated 17.10.2019 that an incomplete application for grant of OC was applied on 11.02.2019 as fire NOC from the competent authority was granted only on 30.05.2019 which is subsequent to the filing of application for occupation certificate. Also, the Chief Engineer-I, HSVP, Panchkula has submitted his requisite report in respect of the said project on 25.07.2019. The District Town Planner, Gurugram and Senior Town Planner, Gurugram has submitted requisite report about this project on 06.09.2019 and 07.09.2019 respectively. As such, the application submitted on 11.02.2019 was incomplete and an incomplete application is no application in the eyes of law.

20. The application for issuance of occupancy certificate shall be moved in the prescribed forms and accompanied by the documents mentioned in sub-code 4.10.1 of the Haryana Building Code, 2017. As per sub-code 4.10.4 of the said Code, after receipt of application for grant of occupancy certificate, the competent authority shall communicate in writing within 60 days, its decision for grant/ refusal of such permission for occupation of the building in Form BR-VII. In the present case, the respondent has completed its application for occupancy certificate only on 07.09.2019 and consequently the concerned authority has granted

occupation certificate on 17.10.2019. Therefore, in view of the deficiency in the said application dated 11.02.2019 and aforesaid reasons, no delay in granting occupation certificate can be attributed to the concerned statutory authority.

G. Findings of the authority

G.1 Delay possession charges

21. **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-03-0701.
22. 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."

23. 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."

24. **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.
25. The counsel for 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 05.11.2019, therefore, there is no delay in offering possession in so far as respondent is concerned.

26. 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.
27. 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.

28. **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.

29. 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.

30. 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%.

31. **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.

32. 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;"

33. 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.
34. 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 05.11.2019. 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.

35. 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. However, the respondent offered the possession of the unit in question to the complainants only on 05.11.2019. 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 terms of clause 19(10) of the Act, the complainants were obligated to take possession by 05.01.2020 (Offer of possession plus 2 months). However, the complainants have taken possession of the unit in question on 15.11.2019 and this fact has been admitted by the respondent. 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 date of handing over of possession by the respondent i.e. 15.11.2019.
36. 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 the date of handing over possession i.e., 15.11.2019 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

H. Directions of the authority

37. 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 the date of handing over possession i.e., 15.11.2019. 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 is also not entitled to 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 Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

38. Complaint stands disposed of.

39. 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.