

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

Complaint no. : 3323 of 2020
First date of hearing : 07.01.2021
Date of decision : 12.10.2021

1. Amit Yadav
2. Sanju Yadav
Both RR/o: L-49D, First Floor, Block L,
Saket, New Delhi-110017.

Complainants

Versus

1. M/s Emaar MGF Land Ltd.
2. M/s Kamdhenu Projects Pvt. Ltd.
Both addressed at: 306-308, Square One, C-2,
District Centre, Saket, New Delhi-110017.

Respondents

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 respondents

ORDER

1. The present complaint dated 21.10.2020 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	<p>Registered in two phases</p> <p>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]</p> <p>ii. 14 of 2019 dated 28.03.2019(Phase II) [Valid up to 17.10.2018 for 4.57 acres]</p>
7.	Occupation certificate granted on	<p>17.10.2019</p> <p>[Page 116 of reply]</p>



8.	Provision allotment letter dated	13.03.2018 [Page 25 of complaint]
9.	Unit no.	IG-03-1004, 10 th floor, tower/ building no. 03 [Page 47 of complaint]
10.	Unit measuring	1255.73 sq. ft. (Carpet area) 2025 sq. ft. (Super area) [Page 47 of complaint]
11.	Date of execution of buyer's agreement	14.08.2018 [Page 39 of complaint]
12.	Payment plan	Time linked payment plan [Page 84 of complaint]
13.	Total consideration as per statement of account dated 18.11.2020	Rs.1,19,38,735/- [Page 119 of reply]
14.	Total amount paid by the complainants as per statement of account dated 18.11.2020	Rs.1,19,53,018/- [Page 120 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. [Page 55 of complaint]	31.12.2018
16.	Date of offer of possession to the complainants	24.10.2019 [Page 100 of complaint]
17.	The complainants have taken possession vide unit handover letter dated	05.03.2020 [Page 106 of complaint]
18.	Delay in handing over possession w.e.f. 31.12.2018 (due date of handing over possession) till 05.03.2020 (date of handing over of possession)	1 year 2 months 5 days

B. Facts of the complaint

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

- i. That the respondent company 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 has the best of the amenities.
- ii. That the respondent company claimed that a license from the Director General, Town and Country Planning, Haryana Chandigarh has been obtained in collaboration with respondent no.2 for development of the project land into group housing complex comprising of multi-storied residential apartment in accordance with law bearing license no. 107 of 2012 dated 15.10.2012. Further, respondent no. 2 is wholly owned subsidiary of respondent no.1 and is the owner of the project land whereby the respondent no.1 entered into a collaboration agreement. All the payments by the complainants have been made to respondent no. 1 (hereinafter referred as 'respondent company').
- iii. That based on the aforementioned representation and enquiries made, the complainants started payment from 06.03.2018 pursuant to which allotment letter was issued by the respondent

company on 13.03.2018 for allotment of unit no. IG-03-1004 proposed to be built at 10th floor in the said project. Subsequently, both the parties entered into buyer's agreement on 14.08.2018. 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.

- iv. That as per the buyer's agreement, the respondent company agreed to sell the said unit having carpet area of 1225 sq. ft. for an amount of Rs.1,07,00,575/- plus GST in accordance with Annexure-III of the buyer's agreement. 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 delayed possession interest 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.1,19,53,018/- towards the said unit in accordance with the demand raised by the respondent company. Despite the said payments, the respondent company failed to

deliver the possession in agreed timeframe (i.e., 31.12.2018) for reasons best known to them and the respondent company never bothered to intimate reasons and reasoning for the delay to the complainants. Therefore, the respondent company has breached the sanctity of the agreement to sell i.e. buyer's agreement.

- v. That the offer of possession was initially made to the complainants by the respondent company on 24.10.2019. The complainants wrote to the respondent company mails repeatedly to provide compensation for delay caused. The unit was booked by the complainants on the false representation that the unit will be available by 31.12.2018 but the complainants received offer of possession through letter dated 24.10.2019. However, the actual possession of the said unit was handed over only on 05.03.2020.
- vi. That there is 10 months of unexplained delay in handing over the possession by the respondent company to the complainants. 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 company 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 i.e., 31.12.2018 till the actual date of handing over the possession of the said unit i.e. 05.03.2020 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 respondents

6. The respondents have contested the complaint on the following grounds:
 - i. 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. The present complaint is liable to be dismissed on this ground alone.
 - ii. That the complainants were provisionally allotted apartment no. IG-03-1004 in the project vide allotment letter dated 13.03.2018. The buyer's agreement was executed between the parties on 14.08.2018. The payment plan was voluntarily chosen by the complainants. The statement of account dated 18.11.2020 reflects

the payments made by the complainants and accrued delayed payment interest.

- iii. That respondent no.1 had registered the project under the provisions of the Act vide registration certificate bearing no. 208 of 2017 dated 15.09.2017. Thereafter, the validity of the registration of the said project had been extended by a period of one year till 31.12.2019 vide certificate dated 02.08.2019 with respect to extension of registration. That the completion of the project was delayed by the contractor, Capacite Infraprojects Ltd despite the best efforts and reminders from respondent no.1. On account of the delay by the contractor, respondent no.1 was constrained to apply for extension of registration of the project under the Act.
- iv. That in so far as tower in which the apartment in question is situated is concerned, the respondent no.1 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 no.1 offered possession of the said unit to the complainants vide letter of offer of possession dated 24.10.2019. 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 respondent no.1 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. The complainants have falsely alleged delay in offering possession of the unit by the respondent no.1. As a matter of fact, there is no delay in so far as the respondent no.1 is concerned. Furthermore, the complainants had obtained possession of the said unit on 05.03.2020 and had also executed unit hand over letter dated 05.03.2020.

v. That the contractual relationship between the complainants and the respondents are governed by the terms and conditions of the buyer's agreement dated 14.08.2018. 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 24.10.2019. Thus, there is no delay in so far as the respondent no.1 is concerned.

vi. That the respondents had been prevented from timely implementation of the project by reasons beyond its power and control. It is submitted that the respondents 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 no.1 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 no.1 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 no.1 in the facts and circumstances of the case.

- vii. That the several allottees have defaulted in timely remittance of the 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 no.1. The respondent no.1, despite default of several allottees, has diligently and earnestly pursued the development of the project in question and has constructed the project in question as expeditiously as possible. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

E. Jurisdiction of the authority

7. The preliminary objections raised by the respondents 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

8. 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

9. 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 of the authority

F.I Delay possession charges

10. **Relief sought by the complainants:** Direct the respondent company 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 i.e., 31.12.2018 till the actual date of handing over the possession of the said unit i.e. 05.03.2020 on the amount paid by the complainants towards the unit no. IG-03-1004.

11. 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."

12. Clause 7(a) of the buyer's agreement dated 14.08.2018 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."

13. **Due date of handing over possession:** As per clause 7(a) of the buyer's agreement, the respondents were under obligation to offer the possession of the unit to the allottee on or before 31.12.2018.
14. The counsel for the respondents 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 respondents were 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 24.10.2019, therefore, there is no delay in offering possession in so far as respondents are concerned.
15. 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)(l)(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.

16. 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 respondents were 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 respondents applied for extension of registration. The arrangement between the contractor and the respondents w.r.t construction of the said project is an internal and an independent decision of the respondents 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 respondents were liable to handover possession by 31.12.2018 and the respondents have failed to handover possession by the said due date.

17. **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.

18. 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.
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., 12.10.2021 is 7.30%. Accordingly, the prescribed rate of interest will be MCLR +2% i.e., 9.30%.
20. **Rate of interest to be paid by complainants for delay in making payments:** The respondents 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.

21. 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;"*

22. 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.
23. On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that the respondents are 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 14.08.2018, possession of the booked unit was to be delivered on or



before 31.12.2018. Occupation Certificate has been received by the respondents on 17.10.2019 and the possession of the subject unit was offered to the complainants on 24.10.2019. 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 respondents to offer physical possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 14.08.2018 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 14.08.2018 to hand over the possession within the stipulated period.

24. 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 respondents offered the possession of the unit in question to the complainants only on 24.10.2019. So, it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. However, the complainants have taken possession of the unit in question on 05.03.2020 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 respondents i.e. 05.03.2020.

25. 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 respondents 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., 05.03.2020 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

G. Directions of the authority

26. 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 respondents are 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., 05.03.2020. 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 respondents/promoters which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delay possession charges as per section 2(za) of the Act.


- iii. The respondents shall not charge anything from the complainants which is not the part of the buyer's agreement. The respondents are 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.

27. Complaint stands disposed of.

28. 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.