

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

Complaint no. : 3900 of 2021
First date of hearing : 12.10.2021
Date of decision : 12.10.2021

Emaar India Ltd.
Address: 306-308, Square One, C-2,
District Centre, Saket, New Delhi-110017.

Complainant

Versus

1. Ghanshyam Bhardwaj
2. Rachna Sharma
Both RR/o: H.no. 290, Rama Krishna Apartments,
Plot no.29, Patparganj, IP Extension, New Delhi.

Respondents

CORAM:

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

**Chairman
Member
Member**

APPEARANCE

Shri Harshit Batra
Shri Nilotpal Shyam

Advocate for the complainant
Advocate for the respondents

HARERA
ORDER
GURUGRAM

1. The present complaint dated 24.09.2021 has been filed by the complainant/promoter 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 violation of section 19(10) of the Act wherein it is inter alia prescribed that the allottee shall take physical

possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said unit. Also, the obligation of allottee to make necessary payments in the manner and within time as specified in the agreement for sale under section 19(6) and to pay interest, at such rate as may be prescribed, for any delay in payments as per section 19(7) of the Act.

A. Project and unit related details

2. The particulars of the project, the details of sale consideration, the amount paid by the respondents, 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 30 of complaint]
8.	Provision allotment letter dated	15.01.2019 [Page 33 of complaint]
9.	Unit no.	IG-07-1803, 18 th floor, tower/ building no. 07 [Page 50 of complaint]
10.	Unit measuring	1255.73 sq. ft. (Carpet area) 2025 sq. ft. (Super area) [Page 50 of complaint]
11.	Date of execution of buyer's agreement	26.02.2019 [Page 42 of complaint]
12.	Payment plan	Time linked payment plan [Page 89 of complaint]
13.	Total consideration as per statement of account dated 09.12.2019	Rs.1,23,81,324 /- [Additional document supplied by the respondents]
14.	Total amount paid by the respondents as per statement of account dated 09.12.2019	Rs.1,10,38,651/- [Additional document supplied by the respondents]
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 58 of complaint]	31.12.2018
16.	Date of offer of possession to the respondents	06.11.2019 [Page 110 of complaint]
17.	The respondents have taken possession on	10.12.2019 [As stated by the counsel of the respondent during hearing and as per additional document filed by the respondents]

18.	Delay in handing over possession w.e.f. 31.12.2018 (due date of handing over possession) till 10.12.2019 (date of handing over of possession)	11 months 10 days
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B. Facts of the complaint

3. The complainant has made following submissions in the complaint:

- i. That licence no. 107 of 2012 dated 15.10.2012 for development of a group housing colony was granted to the complainant by the Director, Town & country Planning, Govt. of Haryana upon which the complainant devised the development of the project under the name and style "Imperial Gardens". After the implementation of the Act in the state of Haryana, the complainant had registered the project after noting compliance with all the prerequisite details and attained registration no. 208 of 2017 dated 15.09.2017 and thereafter, extension vide no. 03 of 2019 dated 02.08.2019, the validity of which extended till 31.12.2019. Before the expiry of the registration certificate, the complainant applied for occupancy certificate on 11.02.2019 which was consequently obtained on 17.10.2019. It is to be noted that the construction of approximately 693 booked apartments has been completed, out of which approximately 417 units were handed over and consequently many families are residing in the project at the time of filing this complaint.

- ii. That the respondents approached the complainant expressing an intention of booking an allotment in the project and a willingness to pay for the same, upon which a provisional allotment dated 15.01.2019 was made in the name of the respondents. Thereafter, a buyer's agreement dated 26.02.2019 was executed between the complainant and the respondents for unit no. IG-07-1803 admeasuring 2025 sq. ft. (super area) on 18th floor in tower/building no. 07 in the said project for the sale price of Rs.1,10,90,487 which comes to be Rs.1,23,81,325 with IBMS/IFMS and GST charges.
- iii. That the respondents assented to pay the monies against the unit through a subvention plan. However, has defaulted in the payment against the unit since the very beginning. A number of notices and reminders at first and second instance had been sent to the respondents for payment of dues. That the continuous defaults, from the very beginning, on part of the respondents *prima facie* show the wilfulness in causing the defaults.
- iv. That the complainant has acted in the utmost transparent manner and has timely offered the possession of the unit to the complainant. That as per clause 7(a) of the agreement, possession was to be given within 60 days from the date of issuance of occupation certificate. That occupancy certificate was issued on 17.10.2019 and the complainant offered the possession on

06.11.2019, i.e., within 20 days of receipt of occupancy certificate. It needs to be categorically understood that there has been no delay caused in the delivery of possession and the respondents have timely offered the possession. In any condition whatsoever, it must be noted that this timeline is subject to *force majeure* circumstances and fulfilment 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 the payment plan. The respondents still stand in default in making the payments as a total amount of Rs.19,39,661/- is due and payable by the respondents.

- v. That the allottee is considered under a condition of default as under clause 16(c) of the agreement and section 19(6), 19(7) & 19(10) of the Act if he does not make timely payment as per the payment plan, taxes and execute conveyance deed. Moreover, the respondents categorically understood and agreed under clause 12 of the buyer's agreement that time is the essence of payment and in cases of non-payment of any dues shall alter the timelines for delivery of possession. Further, the respondents' fault of non-payment of dues and not taking possession within 30 days of issuance of offer of possession as per clause 7(d) of the agreement, the respondents are at fault and hence liable to pay the maintenance charges as per clause 7(f) of the buyer's

agreement. There has been no delay in delivery of possession of the unit, in any manner whatsoever even though there were *force majeure* circumstances gravely impacting the complainant. The complainant was adversely affected by various construction bans, lack of availability of building material, regulation of the construction and development activities by the judicial authorities including NGT in NCR on account of the environmental conditions, restrictions on usage of ground water by the High Court of Punjab & Haryana, etc. and other *force majeure* circumstances, yet, the complainant completed the construction of the project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the respondents and demanding the monies as per the payment plan only.

- vi. That the complainant was additionally gravely affected due to its dispute with the contractor. It is submitted that the complainant had appointed a contractor operating under the name and style of Capacite Infraprojects Ltd. for construction and implementation of the project. The said contractor had assured, represented, warranted and claimed that it has the necessary resources, competence, capacity, capability and expertise for undertaking, performing, effectuating and completing the work undertaken by it. The complainant had no reason to suspect the

bona fide of the said contractor at the relevant time and awarded the work to the said contractor. 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 complainant 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.

- vii. That all these circumstances come within the purview of the *force majeure* and automatically extend the timelines of delivery of possession, however, the complainant managed to offer the possession within 20 days of issuance of occupancy certificate, when in fact, the timeline extended till 60 days as per clause 7(a) of the buyer's agreement.
- viii. That thus, the respondents are liable to clear its dues as per the statement of accounts annexed herewith and take the possession of the unit and execute and register the conveyance deed of the unit accordingly. That this is in line with the holding of the Hon'ble Supreme Court in *Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna and Ors., decided on 11.01.2021 - MANU/SC/0013/2021* where, Phase1 of the project had been issued the occupancy certificate, consequently, the developer offered the possession to the respective allottees. The Supreme



Court directed such allottees to take the possession of their respective allotments.

ix. That despite of the defaulting conduct of the respondents, the complainant has always acted in good faith. That after having defaulted in the timely payment and fearing the cancellation of the unit, the respondents requested the complainant for waiver of delayed payment charges and restructuring of payment plan, which, as a token of good faith, was approved by the complainant and an undertaking cum indemnity dated 21.06.2019 was executed by the complainant in favour of the respondent wherein a delayed payment charges of Rs.88,667/- has been waived off. Accordingly, all the claims of the respondents had been steeled along with.

x. That the project is 100% completed and thus the respondents should be bound to make the due payments and should, under no circumstances, be allowed to wriggle out of its obligations. Hence, the Hon'ble Authority is requested to take note of the matter and direct the respondents to comply with its contractual and legal obligations.

C. Relief sought by the complainant

4. The complainant has filed the present complaint for seeking following reliefs:

- i. Direct the respondents to pay the outstanding dues of Rs.19,39,661 (as on 22.09.2021).
 - ii. Direct the respondents to pay the interest @ MCLR plus 2% on the pending payments as per the payment plan.
 - iii. Direct the respondents to actively participate in the execution and registration of conveyance deed.
 - iv. Grant any other relief as this hon'ble authority deems fit in the peculiar facts and circumstances of the present complaint.
5. On the date of hearing, the authority explained to the respondents/promoters about the contravention as alleged to have been committed in relation to section 19(6), (7) & (10) of the Act to plead guilty or not to plead guilty.

D. Reply of the respondents

6. The respondents have contested the complaint on the following grounds:
- i. That complainant has filed the present complaint seeking compensation and interest for alleged outstanding dues. It is respectfully submitted that complaints pertaining to interests, 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. That the complainant has not come before this hon'ble authority with clean hands by being in default of buyer's agreement as well

as of the Act by not paying delayed possession interest and has concealed vital and material facts as to completion of project and possession of the unit leading to interest liability payable to the respondents.

- iii. That the complainant has executed the buyer's agreement on 26.02.2019 with the respondents for unit no. IG-07-1803 admeasuring 2025 sq. ft. (super area) on 18th floor in tower no. 07 in the said project of the complainant company. The respondents have made timely payments as per the payment plan annexed to the agreement and in accordance with the demands raised by the complainant company.
- iv. That the complainant company suspiciously compelled the respondents to execute an indemnity cum undertaking thereby forfeiting their rights and claims against the company in respect to the said unit. It is noteworthy that the respondents availed a home loan with regard to impugned unit, however, the disbursal of the home loan got delayed due to the reasons solely attributable to the complainant company as they did not provide the proper stamp paper along with the buyer's agreement as required for the bank to process the home loan. It took considerable amount of time for the complainant company to resolve one simple issue and thus resulted in delayed disbursal of home loan which in turn resulted in delayed payment of installment to the complainant company. The complainant company exploited their own fault and compelled the respondents to sign an indemnity bond for waiving the delayed possession interest which arose for the faults solely attributable to them. Even after repeated request of the respondents that they are

eligible to get interest on the amount paid for the period of delay there have been no response by the complainant company. There has been a delay of over one year in handing over of possession. The complainant company is liable to pay interest for the said period.

- v. That even otherwise, such affidavit cum undertaking cannot act as a bar on respondents against their genuine claim of delayed possession charges. The issue is no more *res integra*, the hon'ble appellate tribunal in *Sharad Awasthi & Anr. v. Pivotal Infrastructure Pvt. Ltd. & Anr. Appeal No. 140 of 2019, decision dated 27.11.2019*, the relevant observation of Hon'ble Appellate Tribunal in this regard is as under:-

".....Hence, the genuine claims of the appellants cannot be defeated on the basis of the affidavit (Annexure R-6). Reference can be made to case *M/s Ambica Construction Vs. Union of India (Supra)*, wherein the Hon'ble Apex Court has laid down as under: -

"17. From the submissions made on behalf of the respective parties and in particular from the submissions made on behalf of the appellant, it is apparent that unless a discharge certificate is given in advance, payment of bills are generally delayed. Although, Clause 43(2) has been included in the General Conditions of Contract, the same is meant to be a safeguard as against frivolous claims after final measurement. Having regard to the decision in the case of *Reshmi Constructions's (supra)*, it can no longer be said that such a clause in the contract would be an absolute bar to a contractor raising claims which are genuine, even after the submission of such No Claim Certificate.

27. Thus, in view of the aforesaid ratio of law laid down by the Hon'ble Apex Court, the genuine claims of the appellants for delayed possession charges and refund of excess transfer fee cannot be declined on the basis of the affidavit dated 20.12.2017 (Annexure R-6)."

- vi. That the complainant company has not acted in good faith and compelled the respondents to adhere to erroneous and illegal demands in respect of the said unit. The complainant company

sought advance common area maintenance charges for the 24 months whereas the relevant clause 19(b) of the buyer's agreement talks about advance common area maintenance charges for only 12 months. Even otherwise, charging advance common area maintenance charges for such a long period wherein the payment has to be made monthly to the maintenance agency is arbitrary and illegal.

- vii. That it is evident from the entire sequence of events, that no illegality or lapse can be attributed to the respondents. As they have never denied to make the payment of the dues rather they are more than happy to pay only in the condition that they adjust the amount against what is pending with the complainant company. That the unit included certain major structural defects such as cracks in Kitchen, Seepage issue, Broken slab etc. Further the complainant company is obliged make the relevant repair works in the unit.
- viii. That the complainant has failed to consider that respondents are eligible to get delay possession charges from the date of delay i.e. 31.12.2018 to the date of offer of possession i.e. 11.11.2019. The respondents are ready to pay the dues post adjustment of the said interest amount. It is noteworthy that the respondents are working class individual and will not be able to pay anything extra then what is justified under law.
7. Copies of all the documents have been filed and placed on record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of theses undisputed documents.

E. Jurisdiction of the authority

8. 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

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has completed territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

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 and duties of the allottee as per section 19(6), (7) and (10) of the Act leaving aside compensation which is to be decided by the adjudicating officer, if pursued by the parties at a later stage.

F. Finding on the relief sought by the complainant

9. **Relief sought by the complainant:** Direct the respondents to pay the outstanding dues of Rs.19,39,661/- (as on 22.09.2021) and direct the respondents to pay the interest @ MCLR plus 2% on the pending payments as per the payment plan.
10. In the present complaint, the complainant/promoter intend to give the possession of the apartment which is ready and as per section 19(10) the Act, the allottees shall take physical possession of the apartment, plot, building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building as the case may be. Section 19(10) proviso read as under:

"19. Right and duties of allottees. -

*.....
(10) Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be."*

The respondents/allottees have also failed to abide by the terms of buyer's agreement by not making the payments in timely manner and take the possession of the unit in question as per the terms and conditions of the buyer's agreement and the payment plan opted by the respondents/allottees. Further, despite repeated follow-ups by the complainant and the complainant having performed their contractual obligations, the respondents-allottees withheld their contractual obligation. The respondents-allottees shall make the requisite payment as per the provision of section 19(6) of the Act and as per section 19(7) to pay the interest at such rate as may be prescribed for any delay in

payments towards any amount or charges to be paid under sub-section (6). Proviso to section 19(6) and 19(7) reads as under:

"19. Right and duties of allottees. -

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

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

11. **Rate of interest to be paid by respondents for delay in making payments:** The complainant contended that the respondents 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.

12. The authority observes 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 promoters, in 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;"*

13. 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 marginal cost of lending rate +2% i.e., 9.30%. Therefore, interest on the delay payments from the allottees shall be charged at the prescribed rate i.e. 9.30% by promoter.

14. The authority observed that there is delay on the part of the complainant-promoter to handover the physical possession of the unit to the respondents-allottees and as such, the respondents-allottees are entitled for delayed possession charges under 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."

15. Clause 7(a) of the buyer's agreement dated 26.02.2019 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."

16. **Due date of handing over possession:** As per clause 7(a) of the buyer's agreement, the complainant-promoter was under obligation to offer the possession of the unit to the respondents-allottees on or before 31.12.2018 or such time as may be extended by the competent authority.
17. The counsel for the complainant-promoter 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 complainant 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 06.11.2019,



therefore, there is no delay in offering possession in so far as complainant is concerned.

18. 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)(I)(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.

19. 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 complainant-promoter was unable to handover the possession as there was 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 complainant-promoter applied for extension of registration. The arrangement between the contractor and the promoter w.r.t construction of the said project is an internal and an independent decision of the promoter 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 complainant-promoter was liable to handover possession by 31.12.2018 and the complainant-promoter has failed to handover possession by the said due date.

20. **Admissibility of delay possession charges at prescribed rate of interest:** The respondents-allottees 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.

21. 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. 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%.
22. 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 complainant-promoter offered the possession of the unit in question to the respondents-allottees only on 06.11.2019. So, it can be said that the respondents-allottees 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 respondents-allottees were obligated to take possession by 06.01.2020 (Offer of possession plus 2 months). However, the respondents-allottees have taken possession of the unit in question on 10.12.2019 as admitted by the counsel of the respondents. 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 complainant-promoter i.e. 10.12.2019.

23. 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 complainant-promoter is established. As such the respondents-allottees 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., 10.12.2019 as per provisions of section 18(1) of the Act read with rule 15 of the rules.
24. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondents/allottees are in contravention of the section 19(6), 19(7) and 19(10) of the Act by not making the payment on time and not taking the possession as per the agreement. By virtue of clause 7(a) of the agreement executed between both the parties on 26.02.2019, the possession of the subject apartment was to be delivered by 31.12.2018 and the possession has been offered by the complainant promoter on 06.11.2019. Accordingly, it is the failure of the complainant-promoter to fulfil its obligations and responsibilities as per the buyer's agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with

proviso to section 18(1) of the Act on the part of the complainant is also established. As such the respondents-allottees shall be paid, by the complainant-promoter, interest for every month of delay from due date of possession i.e., 31.12.2018 till the handing over of the possession i.e. 10.12.2019 at the prescribed rate i.e., 9.30 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.


H. Directions of the authority:


25. 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) of the Act:

- i. The respondents/allottees shall make the requisite payments and take the possession of the subject apartment as per the provisions of section 19(6), (7) and (10) of the Act and take possession of the subject unit within 2 months from the date of this order.
- ii. The complainant 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 respondents from due date of possession i.e., 31.12.2018 till the date of handing over of possession i.e., 10.12.2019. The arrears of interest accrued so far shall be paid to the respondents within 90 days from the date of this order as per rule 16(2) of the rules.

- iii. The respondents are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. The rate of interest chargeable from the respondents-allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the complainant/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.
- iv. The complainant shall not charge anything from the respondents which is not the part of the buyer's agreement. The complainant is also not entitled to claim holding charges from the respondents/allottees at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.
26. Complaint stands disposed of.
27. 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.