

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

Complaint no. : 2927 of 2020  
First date of hearing : 11.11.2020  
Date of decision : 12.10.2021

Shivam Gupta  
R/o: L-49D, First Floor, Block L,  
Saket, New Delhi-110017.

**Complainant**

Versus

1. M/s Emaar MGF Land Ltd.  
(Now, Emaar India Limited)  
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 complainant  
Advocate for the respondents

**ORDER**

1. The present complaint dated 06.10.2020 has been filed by the complainant/allottee 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 complainant, 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><b>Registered in two phases</b></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	17.10.2019 [Page 39 of reply]



8.	Provision allotment letter dated	<b>28.11.2018</b> [Page 45 of reply]
9.	Unit no.	IG-03-1104, 11 <sup>th</sup> floor, tower no. 03 [Page 36 of complaint]
10.	Unit measuring	1255.73 sq. ft. (Carpet area) 2025 sq. ft. (Super area) [Page 36 of complaint]
11.	Date of execution of buyer's agreement	24.12.2018 [Page 28 of complaint]
12.	Payment plan	Time linked payment plan (Subvention plan) [Page 76 of complaint]
13.	Total consideration as per statement of account dated 05.11.2020	Rs.1,29,94,137/- [Page 111 of reply]
14.	Total amount paid by the complainant as per statement of account dated 05.11.2020	Rs.1,29,84,230/- [Page 112 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 44 of complaint]	31.12.2018
16.	<b>Date of offer of possession to the complainant</b>	11.11.2019 [Page 115 of reply]
17.	<b>The complainant has taken possession on</b>	21.12.2019 [As submitted by the complainant at page 4 of complaint]
18.	Delay in handing over possession w.e.f. 31.12.2018 (due date of handing over possession) till 21.12.2019	11 months 21 days

	(date of handing over of possession)	
--	--------------------------------------	--

**B. Facts of the complaint**

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

- i. That the respondent company through their representative had approached the complainant 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 complainant and his family and has 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 complainant demanded the same, respondent company refused to provide such voucher at the time of giving the letter of possession. On repeated reminders, they have asked to collect the same from the office through the mail dated 13.04.2020 but the same has not been provided till date despite another promise.
- 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 complainant have been made to respondent no. 1 (hereinafter referred as 'respondent company').

iii. That based on the aforementioned representation and enquiries made, the complainant started payment from 16.11.2018 for allotment of unit no. IG-03-1104 proposed to be built at 11<sup>th</sup> floor in the said project. Subsequently, both the parties entered into buyer's agreement on 24.12.2018. 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 complainant.

iv. That as per the buyer's agreement, the respondent agreed to sell the said unit having carpet area of 1225 sq. ft. for an amount of Rs.1,08,76,981/- as basic sale price, car parking charges, EDC and IDC, preferential location charges and IFMS etc. Accordingly, the

cost of the property is estimated as Rs.1,29,94,138/-. 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 and the rules made thereunder. The complainant made a total payment of Rs.1,15,81,108/- 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., December 2018) for reasons best known to them and the respondent company never bothered to intimate reasons and reasoning for the delay to the complainant. Therefore, the respondents have breached the sanctity of the agreement to sell i.e., buyer's agreement. The offer of possession was made to the complainant by the respondent company on 11.11.2019 i.e., after delay of almost 11 months. Further, the physical possession of the said unit was only handed over on 21.12.2019 i.e., after delay of almost a year from the promised date.



- v. That there is around 11 months of unexplained delay in handing over the possession by the respondent company to the complainant. Therefore, the complainant has genuine grievance which requires the intervention of the hon'ble authority in order to do justice with them. Accordingly, the respondent company is under an obligation to pay interest at prescribed rate (i.e. MCLR + 2%) from the date of possession as promised (i.e. 31.12.2018) till the actual handing over the possession (i.e. 21.12.2019).
- vi. That in accordance with payment plan of the buyer's agreement, the complainant is liable to pay the final instalment of Rs.13,93,760/- on 01.09.2020. Therefore, the delayed interest payable to the complainant in accordance with section 18 of the Act must be adjusted in the said demand dated 01.09.2020 and the respondent company may be directed to issue a demand after adjusting the said amount payable to the complainant by the respondent company. In the meantime, the payment due on 01.09.2020 may be stayed till the disposal of the present complaint. Hence, this complaint.

**C. Relief sought by the complainant**

4. The complainant is 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 on the amount paid by the complainant towards the unit no. IG-03-1104.
- ii. Direct the respondent company to demand the instalment dated 01.09.2020 after adjusting the amount payable to the complainant.
  - iii. Direct the respondent to immediately handover the Urban Ladder Vouchers worth Rs.3,00,000/- to the complainant as promised.
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. That the complainant has filed the present complaint seeking interest towards alleged delay in handing over the property among other reliefs. It is respectfully submitted that complaints pertaining to refund/compensation/interest are to be decided by the adjudicating officer under the Act read with relevant rules and not by this hon'ble authority. The present complaint is liable to be dismissed on this ground alone.
  - ii. That the present complaint is liable to be dismissed as *firstly*, the complainant has no locus standi to file the present complaint. *Secondly*, it is submitted that as per Act and the rules, a complaint



may be filed by a person only if the respondents have committed any act in violation of the Act and/or the rules. It is submitted that the complainant herein has failed to bring on record any document, evidence etc. which may prove that the respondents have violated the provisions of the Act or the rules. The same goes to the root of the matter and as such the complaint is liable to be dismissed on this ground alone. *Thirdly*, without prejudice, it is further submitted that section 19(3) provides that the allottee shall be entitled to claim the possession of the apartment, plot or building, as the case may be, as per the declaration given by the promoter under section 4(2)(1)(C) of the Act. That the project in question is duly registered with the Haryana Real Estate Regulatory Authority vide registration certificate bearing memo no. 208 of 2017 and the same was valid till 31.12.2018 and extended up to 31.12.2019.

- iii. That the construction of the said unit has already been completed. Thereafter, the application for issue of occupation certificate was submitted on 11.02.2019 and the competent authority issued the occupation certificate vide letter dated 17.10.2019. Subsequently the letter of offer of possession dated 01.11.2019 read with letter dated 11.11.2019 was sent to the complainant in furtherance of the payment plan opted by the complainant under the subvention scheme, for the purpose of carrying out fit-outs. Thus, on receipt of occupation certificate, the offer of possession was granted in accordance with payment plan opted by the complainant within a period of sixty days from the date of issue of the occupation certificate dated 17.10.2019. However, the complainant chose to

take interim possession and also executed an undertaking in this regard. Thus, there is absolutely no delay, whatsoever, on the part of the respondents. Therefore, no cause of action can be construed to have arisen in favour of the complainant to file a complaint for seeking payment of interest and other reliefs.

- iv. That despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. It is pertinent to note that once an application for grant of occupation certificate is submitted for approval in the office of the concerned statutory authority, the respondent ceases to have any control over the same. The grant of sanction of the occupation certificate is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence. As far as the respondent is concerned, it diligently and sincerely pursued the matter with the concerned statutory authority for obtaining of the occupation certificate. No fault or lapse can be attributed to the respondent in the facts and circumstances of the case. Therefore, the time period utilised by the statutory authority to grant occupation certificate to the respondent is necessarily required to be excluded from computation of the time period utilised for implementation and development of the project. Also, as per clause 13(d) of the buyer's agreement, in the event if there is a delay in handing over possession due to the delay or non-receipt of the occupation certificate, completion certificate and / or any other permission /

sanction from the competent authority, then no compensation shall be payable to the allottee.

- v. That in pursuance of the application form dated 19.11.2018, the complainant- Mr. Shivam Gupta was allotted a unit bearing no. IG-03-1104 vide provisional allotment letter dated 28.11.2018. Subsequently, a buyer's agreement dated 24.12.2018 was also executed between the parties. It is submitted that the tentative cost of the unit was prescribed in annexure-III to the buyer's agreement dated 24.12.2018. It was however also clearly provided in the buyer's agreement that stamp duty, registration charges, and administrative charges for execution and registration of the agreement as well as conveyance deed shall be paid extra by the allottee as and when demanded by the company or at the time set out in annexure III of the said buyer's agreement. In addition, the complainant would also be liable to pay the amount towards delayed payment charges, and other charges /taxes /levies as specified in the buyer's agreement. The complainant was irregular regarding the remittance of installments on time and had defaulted/delayed the payments.
- vi. That the complainant has alleged that the unit was to be handed over to him by 31.12.2018. In this regard, it is respectfully submitted that the complainant cannot read the buyer's agreement in a selective manner. The complainant cannot pick and choose clauses /portion of buyer's agreement that he like and leave the other clauses behind. The entire contract has to be read as a whole so as to fully understand and appreciate the respective rights and

obligations of the parties thereto. As per clause 7(a) of the buyer's agreement dated 24.12.2018, the company was required to offer possession of the unit within 60 days from the date of issuance of the occupation certificate by the concerned authorities. It has further been provided that subject to force majeure and fulfilment by the allottee of the said 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, the company shall offer the possession of the unit by 31.12.2018 or by such time as may be extended by the competent authority.

- vii. That the letter of offer of possession dated 01.11.2019 read with letter dated 11.11.2019 was sent to the complainant in furtherance of the payment plan opted by the complainant under the subvention scheme, for the purpose of carrying out fitouts. Thus, on receipt of occupation certificate dated 17.10.2019, the offer of possession was granted in accordance with payment plan opted by the complainant within a period of sixty days from the date of issue of the occupation certificate dated 17.10.2019. It is further pertinent to note that vide letter dated 11.11.2019, the complainant was also conveyed as under:

*"nonetheless, at this stage, you may choose to take the **final possession** of the unit by remitting the balance sale consideration..."*

Thus, clearly the complainant was also given an option to take final possession of the unit. However, the complainant chose to take interim possession and also executed an undertaking dated 26.11.2019 in this regard. In the said undertaking dated 26.11.2019, the complainant clearly stated that he had paid only part of the unit price and that the remaining unit price, stamp duty and other allied / operational / possession charges are still outstanding against the said unit. He further stated that he was taking over possession of the unit for the limited purpose of carrying out fit-outs / interim possession subject to the prescribed conditions. And that the interim possession shall neither be deemed as final possession nor transfer of the said unit. He also undertook that the company remains the lawful owner of the said unit till the execution of the conveyance deed in his favour and further undertook to vacate the unit immediately in the event of default under the buyer's agreement or as and when called upon by the company. It is submitted that the complainant chose not to take the final possession of the unit despite the same being offered to him vide letter of offer of possession dated 11.11.2019. Eventually as per the request of the complainant final letter of offer of possession dated 12.08.2020 has been sent. Thus, there is absolutely no delay, whatsoever, on the part of the respondents.

viii. That as per clause 7(a) of the buyer's agreement, the company was required to offer the possession of the unit by 31.12.2018 or 'by such time as may be extended by the competent authority'. The said clause would clearly show that the complainant was aware



and alive to the fact that the offer of possession of the unit may be given after 31.12.2018.

- ix. That if the contention of the complainant is looked carefully it would imply that the physical possession of the unit was to be offered within 3-4 days of signing of the buyer's agreement dated 24.12.2018 inasmuch as 25.12.2018 was closed being Christmas and 29.12.2018 and 30.12.2018 were Saturday and Sunday. It is submitted that the buyer's agreement does not reflect any such intention of the parties whereby the parties had agreed that possession had to be handed over on or before 31.12.2018. In fact, prior to approaching the respondents, the complainant/applicant had conducted extensive and independent enquiries regarding the project and it was only after he was fully satisfied with regard to all aspects of the project, that he took an independent and informed decision to seek allotment of the unit, un-influenced in any manner by the respondents. The complainant was aware of the actual status of the project and the subject unit. Even otherwise, on the point of construction and the time line of handing over of possession of the unit, it had been categorically conveyed to the complainant that the company would endeavour to hand over possession of the unit booked, as expeditiously as possible, subject to the reasons beyond the control of the company and also subject to the terms and conditions contained in the buyer's agreement. Also, possession of a unit can only be handed over once all the statutory permissions/approvals have been obtained. Thus, the



above facts would clearly show that the claim made by the complainant is absolutely wrong, incorrect and has no merit at all.

- x. That even otherwise, the 3<sup>rd</sup> instalment was required to be paid by 10.03.2019 or 'on Intimation of Possession' (whichever was earlier, sub. to registration of BBA). The same amply establishes that the complainant was aware that offer of possession of the unit may be given after 31.12.2018. It is thus absolutely wrong and denied that the possession of the unit was to be handed over by 31.12.2018 as alleged in the complaint.
- xi. That the complainant has also prayed for vouchers of 'Urban Ladder' worth Rs.3,00,000/- which were allegedly promised to him. It is submitted that as per the buyer's agreement dated 24.12.2018, gift voucher amounting to Rs.3,00,000/- shall be available for redemption at the time of intimation of possession. The respondent stands by the terms and conditions contained in the buyer's agreement. Reliance of the complainant on the sales brochures to claim vouchers of 'Urban Ladder' is even otherwise completely misplaced inasmuch as, Annexure 5 filed by the complainant on record at page 112 clearly shows that the scheme was available for bookings done till 05.11.2018 and admittedly, the complainant booked the unit after 05.11.2018. In the buyer's agreement, annexure III, relating to pricing and payment plan, it has inter alia been agreed that "Gift vouchers amounting Rs.300000/- shall be available for redemption at the time of Intimation of possession. Shall not be adjusted in the price / any instalment". In pursuance of the said clause in the buyer's

agreement relating to gift vouchers, it is submitted that the commitment was to hand over gift vouchers. Accordingly, respondent offered to provide vouchers of Livespace for the said amount. It is submitted that once a buyer's agreement has been accepted and signed, the same supersedes all other verbal or written communications. However, the complainant is unreasonably and illegally pressurising the respondent for vouchers of a specific company called Urban Ladder. It is submitted that the complainant cannot coerce the respondent to handover vouchers of a particular brand. It is submitted that the said averment of the complainant bears no water and is liable to be dismissed by this hon'ble authority.

xii. That the complainant has also prayed that the respondent may be directed to demand the instalment dated 01.09.2020 after adjusting the alleged amount payable to the complainant by the respondent. It is submitted that the respondents are not liable to pay any amount to the complainant as sought and alleged by the complainant. As such the question of making any adjustment in payment does not arise at all. The present complaint is based upon an erroneous interpretation of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement.

xiii. That many of the allottees of the project, including the complainant, have defaulted/delayed in making payment of the amounts which resulted in slowdown in pace of the development. It is submitted that the development of the project was dependent



upon the availability of funds from the allottees who were under a contractual obligation to make payments as per the schedule of payment opted by them. Delayed payments such as towards the unit in question, have an adverse impact on the project deliverables. The complainant cannot be allowed to take advantage of their own wrong. When the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially whereas enormous business losses befall upon the respondent. The respondent, despite default of several allottees, has diligently and earnestly pursued the development of the project in question and has constructed the unit in question as expeditiously as possible. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. It is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold. It is submitted that the filing of the present complaint is nothing but an abuse of the process of law.

- xiv. That delay, if any, in handing over of possession is not attributable to the respondent. 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.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.

**E. Jurisdiction of the authority**

8. The preliminary objections raised by the respondent regarding jurisdiction of the authority to entertain the present complaint stands rejected. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I Territorial jurisdiction**

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

Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

## **E.II Subject-matter jurisdiction**

10. 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.*

11. 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 respondents****F.I Objection regarding exclusion of time taken by the competent authority in processing the application and issuance of occupation certificate**

12. As far as contention of the respondents 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 no.1 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. 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 occupation 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 no.1 has completed its application for occupation 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.I Delay possession charges**

13. **Relief sought by the complainant:** 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 i.e. 21.12.2019 on the amount paid by the complainant towards the unit no. IG-03-1104.

14. In the present complaint, the complainant intends to continue with the project and is 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."*

15. Clause 7(a) of the buyer's agreement dated 24.12.2018 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 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 respondent no.1 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.

17. The counsel of 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 11.11.2019, therefore, there is no delay in offering possession in so far as respondents are 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)(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.

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 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.

20. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is 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.
22. 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%.
23. **Rate of interest to be paid by complainant for delay in making payments:** The respondents contended that the complainant has defaulted in making timely payments of the instalments as per the



payment plan, therefore, he is liable to pay interest on the outstanding payments.

24. 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;"*

25. Therefore, interest on the delay payments from the complainant 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 complainant in case of delay possession charges.

26. 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





24.12.2018, 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 complainant on 11.11.2019. 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 respondents to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 24.12.2018 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 24.12.2018 to hand over the possession within the stipulated period.

27. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 17.10.2019. The respondents offered the possession of the unit in question to the complainant only on 11.11.2019. So, it can be said that the complainant 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 complainant was obligated to take possession by 11.01.2020 (Offer of possession plus 2 months). However, the complainant has taken possession of the unit in question on 21.12.2019 and this fact has been

admitted by 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 respondents i.e. 21.12.2019.

28. 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 complainant is 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. 21.12.2019 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

**G.II Regarding Urban Ladder vouchers worth Rs.3,00,000/-**

29. The complainant is claiming Urban Ladder Vouchers worth Rs.3,00,000/- from the respondents as promised in sale presentation by the respondents. On the other hand, the respondents submitted that the as per buyer's agreement dated 24.12.2018, gift vouchers amounting to Rs.3,00,000/- shall be made available for redemption at the time of intimation of possession and the complainant is unreasonably and illegally pressurising the respondents for vouchers of a specific company called Urban Ladder.
30. The authority observed that the respondents vide brochure has made appealing scheme that those who book the unit in the said project before 05.11.2018 will get "Urban Ladder" voucher worth Rs.3,00,000/-

(Brochure at page 108 of complaint). As per statement of account dated 05.11.2020, the complainant has paid booking amount of Rs.1,00,000/- on 16.11.2018. The complainant made booking after 05.11.2018. Therefore, the complainant is not entitled to the scheme as advertised by the respondents in brochure. However, as per payment plan (annexure III of the buyer's agreement), the parties have agreed that *"Gift vouchers amounting Rs.300000/- shall be available for redemption at the time of Intimation of possession. Shall not be adjusted in the price/any Installments"* (Payment plan at page 76 of complaint). Therefore, as per buyer's agreement, only gift vouchers worth Rs.3,00,000/- were promised which were to be redeemed at the time of offer of possession and does not state any specific name of company. Also, the respondents have stated that the respondents offered to provide vouchers of Livespace for the said amount. Therefore, the authority is of the view that as per the buyer's agreement, the complainant is entitled to gift vouchers of worth Rs.3,00,000/- and not specifically of company called "Urban Ladder".

#### **H. Direction of the authority**

31. 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 complainant from due date of possession i.e. 31.12.2018 till the handing over of possession i.e. 21.12.2019. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.
- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. The rate of interest chargeable from the complainant / allottee 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 promoter may credit delay possession charges in the accounts ledger of the unit of the allottee, if the amount outstanding against the allottee is more than the DPC this will be treated as sufficient compliance of this order.
- iv. If there is no amount outstanding against the allottee or less amount outstanding against the allottee then the balance delay possession charges shall be paid after adjustment of the outstanding against the allottee.


v. The respondents shall not charge anything from the complainant which is not the part of the buyer's agreement. The respondents are also not entitled to claim holding charges from the complainant/allottee 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.

32. Complaint stands disposed of.

33. 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.