



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

Complaint no. : 1508 of 2021
First date of hearing : 29.04.2021
Date of decision : 12.10.2021

1. Sangeeta
2. Dhiraj Kumar
Both RR/o: Gopi Chand Chugh Chakki Wale,
Ward no.5, near State Bank of Patiala,
Assandh, Karnal, Haryana-132039.

Complainants

Versus

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

Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Smt. Aashi Sharma
Shri J.K. Dang

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint dated 22.03.2021 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 115 of reply]</p>



8.	Provision allotment letter dated	28.12.2018 [Page 104 of complaint]
9.	Unit no.	IG-06-0403, 4 th floor, tower/ building no. 06 [Page 57 of complaint]
10.	Unit measuring	1228.17 sq. ft. (Carpet area) 2000 sq. ft. (Super area) [Page 57 of complaint]
11.	Date of execution of buyer's agreement	17.01.2019 [Page 49 of complaint]
12.	Payment plan	Time linked payment plan [Page 96 of complaint]
13.	Total consideration as per statement of account dated 14.04.2021	Rs.1,24,40,400 /- [Page 44 of reply]
14.	Total amount paid by the complainants as per statement of account dated 14.04.2021	Rs.1,12,82,723/- [Page 44 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 65 of complaint]	31.12.2018
16.	Date of offer of possession to the complainants	11.11.2019 [Page 118 of reply]
17.	The complainants have taken possession on	06.12.2019 [Documents at page 122 of reply]
18.	Delay in handing over possession w.e.f. 31.12.2018 (due date of handing over possession) till 06.12.2019 (date of handing over of possession)	11 months 6 days

B. Facts of the complaint

3. The complainants have made following submissions in the complaint:
- i. That the project came to the knowledge of the complainants through the authorized marketing representatives of the respondent. The marketing representatives approached the complainants on behalf of the respondent giving representations of the high-class aesthetic apartment and the timely delivery of their projects. The complainants being simple person with a dream of owning a home for their family were caught into the trap and believed the respondent and its representatives on the representations, assurances, and warranties made by them and booked a unit "IG-06-0403 in the project in question admeasuring super area "2000 sq. ft." and carpet area of "1228.17 sq. ft." for a basic sale price of Rs.1,11,39,000/- on 05.11.2018.
 - ii. That after the booking of allotment, by paying an amount of Rs. 1,00,000/-, the complainants made another payment of Rs. 8,00,000/- on 23.11.2018 and after such payment received an allotment letter dated 28.12.2018. Thereafter, on 17.01.2019, the builder buyer agreement was executed by the respondent. The complainants paid an amount of Rs.1,09,83,251/- on regular time interval as according to the payment plan annexed in the agreement.

iii. That the respondent offered the possession vide letter dated 05.11.2019 for the purpose of taking possession of the unit by the complainants along with final demand letter to pay all the final dues. The complainants were promised by the respondent that the possession of the unit would be given to them by 31.12.2018 only, which is the main reason behind the complainants' booking the apartment in the said project. Upon such promise made by the respondent, the complainants had shifted their kids' school to Sector 102, Gurgaon with the hopes that it would be easier for the kids to travel from home to school. However, due to this inordinate delay in possession from the respondent, the kids have been suffering the most. This has caused not only mental and physical stress on the complainant's family but also financial burden of transport fee for their kids.

iv. That respondents are using their dominant position to exploit the complainants by putting these vague clauses in the buyer's agreement and not giving the possession of the unit to the complainants. In the judgement of *Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and Ors. (W.P 2737 of 2017)*, the Bombay High Court bench held that: "...Agreements entered into with individual purchasers were invariably one-sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favor with unjust clauses on delayed

delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate, etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements." The above-mentioned judgment has been very well appraised by this authority on multiple occasions also.

- v. That at the time of booking, the complainants were informed that the unit is ready to move in and complainants would get the possession on or before 31.12.2018. That the respondent took more than 2 months' time to execute the agreement. Had the respondent executed the agreement within time, the complainants would have got the loan amount disbursed to the respondent. Due to delay in timely execution of the agreement, the complainants paid the disbursed amount on 25.03.2019. That the delivery of the possession of the unit was delayed by the respondent. The complainants' desire to own a house remains committed to the project and they were continuous in making payment of the demands raised by the respondent. Had the respondent completed project on time and handed over the possession of the unit timely, the complainants would have got the conveyance deed executed in their favor. The date of possession shall be calculated from the date of booking as according to the clause mentioned above, the respondent had promised to hand over the possession on or before 31.12.2018 but took more time to execute the agreement.



- vi. That the intimation of possession was given on 05.11.2019 which was delayed by 10 months, however this possession was only a possession offer not close to actual possession, as after visiting the unit, it got obvious to the complainants that the unit was not ready for possession as the same was uninhabitable with a lot of snags. The respondent had promised kitchen door with frame, shutters, and bedroom balconies. However, on visiting the site the complainants were shocked to see that these amenities were not there at all and to their surprise there were water seepages in bedroom, with tilted balconies, and seepages in the balconies as well. This intimation of possession was only there to evade the responsibility and to deceive the authorities that the same was habitable and ready for possession.
- vii. That the complainants tried to confirm about the fixing of the water seepage and the sagging of the balconies several times, however, the respondent paid no heed to the requests of the complainants and ignored to the communication made through WhatsApp. The complainants also tried to communicate their issues to the respondent's email.
- viii. That the complainants accepted the possession of the unit after assurance from the respondent that such issues would be resolved by the respondent once the complainants start residing at the unit. The complainants received the possession of the unit after a delay

of 10 months from the date of possession mentioned in agreement as well as the application form. The complainants accepted the possession and started residing in the unit with a hope of the respondent committing to the assurances given. But the respondent failed to fulfill their assurances with respect to the specifications and amenities as mentioned under the terms and conditions of the agreement.

ix. That the respondent had charged Rs.1,26,000/- on account of operational charges without any reason and justification. That it is also contended that the complainants cannot be made to pay for such unjustified and unreasonable charges. The complainants, at the time of booking were not informed about an amount of Rs.1,26,000/- to be payable as operational charges. The complainants were offered a discount of Rs.1,50,000/- on the base price but the respondent gave the discount on maintenance charges of the unit which was promised to be given at the base price. The respondent with malafide intention adjusted the discount with the maintenance charges to avoid passing over the GST benefit on such amount.

x. That the complainants have been subject to mental agony as the respondents did not provide any particular timeline. Their timeline is all over the place and they have failed miserably to satisfy the questions of the complainants regarding the interest on the

amount paid for delayed possession of the unit. These monthly payments have caused a huge financial burden on the shoulders of the complainants. Hence, this complaint.

C. Relief sought by the complainants

4. The complainants are seeking the following reliefs:

- i. Direct the respondent to pay interest at prescribed rate for the delayed period of handing over the possession calculated from the date of delivery of possession as mentioned in the buyer's agreement till the actual date of handing over the possession of the said unit on the amount paid by the complainants towards the said unit.
- ii. Direct the respondent to submit an affidavit stating the anticipated date of fixing of the structure and amenities of the unit and complete its construction.
- iii. Direct the respondent to adjust the amount paid for operational charges with forthcoming demand.
- iv. To pass any other direction which the hon'ble authority may deems fit in the favor of the complainants and against the respondent.

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 respondent has contested the complaint on the following grounds:

- i. The complainants have filed the present complaint seeking interest for alleged delay in delivering possession of the apartment booked by the complainants. It is respectfully submitted that complaints pertaining 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. Moreover, the adjudicating officer derives his jurisdiction from the central act and the same cannot be negated by the rules made thereunder.
- ii. That the complainants are not "allottees" but investors who have booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale. The apartment in question has been booked by the complainants as a speculative investment and not for the purpose of self-use as a residence.
- iii. That the complainants, in pursuance of the application form, were allotted an independent unit bearing no IG-06-0403, located on the 4th floor, in the project vide provisional allotment letter dated 28.12.2018. The complainants consciously and wilfully opted for a time linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that the complainants would remit every instalment on time as per the payment schedule. The respondent had no reason to suspect bona fide of the complainants.



- iv. That the complainants had defaulted in remittance of installments on time. The respondent was compelled to issue demand notices, reminders etc. calling upon the complainants to make payment of outstanding amounts payable by the complainants under the payment plan/instalment plan opted by them. However, the complainants despite having received the payment request letters, reminders etc. failed to remit the instalments on time to the respondent. Statement of account dated 14.04.2021 as maintained by respondent in due course of its business reflects the delay in remittance of various instalments on the part of the complainants.
- v. That clause 13(c) of the buyer's agreement provides that compensation for any delay in delivery of possession shall only be given to such allottees who are not in default of their obligations envisaged under the agreement and who have not defaulted in payment of instalments as per the payment plan incorporated in the agreement. In case of delay caused due to non- receipt of occupation certificate, completion certificate or any other permission/sanction from the competent authorities, no compensation or any other compensation shall be payable to the allottees. As delineated hereinabove, the complainants, having defaulted in timely remittance of instalment, were/are thus not entitled to any compensation or any amount towards interest as an indemnification for delay, if any, under the buyer's agreement.
- vi. That the rights and obligations of complainants as well as respondent are completely and entirely determined by the covenants incorporated in the buyer's agreement dated

17.01.2019 which continues to be binding upon the parties thereto with full force and effect. It is submitted that as per clause 7 of the buyer's agreement, the possession of the unit in question was liable to be delivered by 31.12.2018 or such time as may be extended by the competent authority subject to the allottee(s) having strictly complied with all terms and conditions of the buyer's agreement. It has also been provided therein that the date for delivery of possession of the unit would stand extended in the event of occurrence of the force majeure circumstances. The complainants have completely misconstrued, misinterpreted and miscalculated the time period as determined in the buyer's agreement.

- vii. That the project of the respondent has been registered under the Act and the rules and the registration certificate was granted by the Haryana Real Estate Regulatory Authority vide memo no. HRERA-140/2017/1083 dated 15.09.2017. It is pertinent to mention that the respondent has applied for extension of the registration and the hon'ble authority has already extended the validity of registration vide memo bearing no. RC/REP/HARERA/GGM/2017/208 dated 02.08.2019. The registration had been extended till 31.12.2019 and the respondent had already offered possession of the unit in question to the complainants vide letter dated 05.11.2019 and thereafter possession had been delivered to the complainants on 06.12.2019. Therefore, there is no delay in delivery of possession of the unit in question. The complaint is devoid of any cause of action. The instant complaint is liable to be dismissed at the threshold.

viii. That clause 13 of the buyer's agreement further provides that no compensation for any delay in delivery of possession caused on account of delay or non-receipt of the occupation certificate, completion certificate or any other permission/sanction from the competent authority shall be provided to the allottees. The respondent had submitted an application dated 11.02.2019 for grant of occupation certificate to the concerned statutory authority. The occupation certificate thereafter was granted on 17.10.2019. It is submitted that once an application for issuance of occupation certificate is submitted before the concerned competent authority the respondent ceases to have any control over the same. The grant of occupation certificate is the prerogative of the concerned statutory authority, and the respondent does not exercise any control over the matter. Therefore, the time period utilised by the concerned statutory authority for granting the occupation certificate needs to be necessarily excluded from the computation of the time period utilised in the implementation of the project in terms of the buyer's agreement. As far as respondent is concerned, it has diligently and sincerely pursued the development and completion of the project in question.

ix. That the complainants were offered possession of the unit in question through letter of offer of possession dated 11.11.2019. The complainants were called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit in

question to them. However, the complainants approached the respondent with request for payment of compensation for the alleged delay in utter disregard of the terms and conditions of the buyer's agreement. The respondent explained to the complainants that the validity of registration has already been extended by the statutory authority and therefore they were/are not entitled to any compensation in terms of the buyer's agreement. However, the complainants threatened the respondent with institution of unwarranted litigation. The instant complaint has been preferred by the complainants in order to obtain wrongful gain and cause wrongful loss to the respondent.

- x. That the complainants wilfully refrained from obtaining possession of the unit in question. It is submitted that the complainants did not have adequate funds to remit the balance payments requisite for obtaining possession in terms of the buyer's agreement and consequently in order to needlessly linger on the matter, the complainants refrained from obtaining possession of the unit in question. Therefore, there is no equity in favour of the complainants. An amount of Rs.11,73,378/- is due and payable by the complainants. It is submitted that the complainants had opted for a subvention scheme whereby the complainants had chosen to obtain interim possession of the unit in question while deferring the last instalment to be paid to the respondent. It has been further provided therein that the complainants would be liable to immediately vacate the unit in question if they default in making payments to the respondent in accordance with the payment plan.

The complainants had further agreed that if they default in making payments in accordance with the payment plan then they shall not be entitled to delayed possession charges. In the present matter, the complainants have consciously and intentionally refrained from making payment of the last instalment to the respondent and therefore, cannot be permitted to take advantage of their own illegal acts.

- xi. That the respondent has paid an amount of Rs.99,706/- + Rs.9,34,748/- + Rs.1,49,472/- as rebate on GST and Rs.13,34,436/- on account of subvention scheme opted for by the complainants. Furthermore, an amount of Rs.1,50,000/- has been credited by the respondent to the account of the complainants as a gesture of goodwill. The aforesaid amounts have been accepted by the complainants in full and final satisfaction of their alleged grievances. The instant complaint is nothing but a gross misuse of process of law. Without prejudice to the rights of the respondent, delayed interest if any has to be calculated only on the amounts deposited by the allottees/complainants towards the basic principal amount of the unit in question and not on any amount credited by the respondent, or any payment made by the allottees/complainants towards delayed payment charges or any taxes/statutory payments etc.
- xii. That the respondent had been prevented from timely implementation of the project by reasons beyond its power and control. It is submitted that the respondent had appointed a contractor on 17.09.2013 operating under the name and style of

Capacite Infraprojects Ltd. for construction and implementation of the project in question. However, the said contractor was not able to meet the agreed timeline for construction of the project. The said contractor failed to deploy adequate manpower, shortage of material, etc. The respondent was constrained to issue several notices, requests etc. to the said contractor to expedite progress of the work at the project site but to no avail. The said contractor consciously and deliberately chose to ignore the legitimate and just requests of the respondent on one pretext or the other and defaulted in carrying out the work in a time bound manner. Therefore, no fault or lapse can be attributed to the respondent in the facts and circumstances of the case.

- xiii. That the purchasers in the project in question have defaulted in timely remittance of the instalments. It is submitted that when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially and further causes enormous business losses to the respondents. It is submitted that the respondents despite defaults of several allottees earnestly fulfilled its obligations under the buyer's agreement and completed the project as expeditiously as possible in the facts and circumstances of the case. The defaults committed by various allottees has delayed the contemplated implementation of the project. The respondents cannot be penalised for indiscipline of its customers. Thus, it is most

respectfully submitted that the present application deserves to be dismissed at the very threshold.

E. Jurisdiction of the authority

7. 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

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 on the objections raised by the respondent**F.1 Objection regarding exclusion of time taken by the competent authority in processing the application and issuance of occupation certificate**

10. As far as contention of the respondent with respect to the exclusion of time taken by the competent authority in processing the application and issuance of occupation certificate is concerned, the authority observed that the respondent has applied for grant of occupation certificate on 11.02.2019 and thereafter vide memo no. ZP-845/AD(RA)/2019/25815 dated 17.10.2019, the occupation certificate has been granted by the competent authority under the prevailing law. The authority cannot be a silent spectator to the deficiency in the application submitted by the promoter for issuance of occupancy certificate. It is evident from the occupation certificate dated 17.10.2019 that an incomplete application for grant of OC was applied on 11.02.2019 as fire NOC from the competent authority was granted only on 30.05.2019 which is subsequent to the filing of application for occupation certificate. Also, the Chief Engineer-I, HSVP, Panchkula has submitted his requisite report in respect of the said project on 25.07.2019. The District Town Planner, Gurugram and Senior Town Planner, Gurugram has submitted requisite report about this project on 06.09.2019 and 07.09.2019 respectively. As such, the application submitted on 11.02.2019 was incomplete and an incomplete application is no application in the eyes of law.



11. 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 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.

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

12. The respondent submitted that the complainants never intended to reside in the unit in question and had booked it with a view to earn huge profit from resale of the same. The respondent submitted that the complainants are investors and not consumers/allottees, thus, the complainants are not entitled to the protection of the Act and thus, the present complaint is not maintainable.
13. The authority observed that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of

interpretation that preamble is an introduction of a statute and states main aims and objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that under section 31 of the Act, any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement, it is revealed that the complainants are allottees/buyers and have paid total price of Rs. 1,12,82,723/- to the respondent/promoter towards purchase of the said unit in the project in question. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

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

14. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between respondent and complainants, it is crystal clear that the complainants are allottee as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and



"allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the complainants-allottees being investors is not entitled to protection of this Act stands rejected.

G. Findings of the authority

G.I Delay possession charges

15. **Relief sought by the complainants:** Direct the respondent to pay interest at prescribed rate for the delayed period of handing over the possession calculated from the date of delivery of possession as mentioned in the buyer's agreement till the actual date of handing over the possession on the amount paid by the complainants.
16. 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."

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

"7. POSSESSION AND SALE DEED

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

18. **Due date of handing over possession:** As per clause 7(a) of the buyer's agreement, the respondent was under obligation to offer the possession of the unit to the allottee on or before 31.12.2018 or such time as may be extended by the competent authority.
19. The counsel for the respondent submitted that the project in question is registered vide no. 208 of 2017 and the same was initially valid till 31.12.2018. However, due to unavoidable circumstances on account of delay by the contractor, the respondent was constrained to seek extension of registration and the same was extended till 31.12.2019. The occupation certificate was granted by the competent authority on



17.10.2019 and the possession was offered on 11.11.2019, therefore, there is no delay in offering possession in so far as respondent is concerned.

20. 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.

21. In the light of the above clause of the buyer's agreement, the promoter was under obligation to handover possession of the subject unit by 31.12.2018 as mentioned in the registration certificate and buyer's agreement. The respondent was unable to handover the possession as there was a delay in construction on part of the contractor. Since, the

construction of the said project was not complete within the time frame as mentioned in the registration certificate consequently, the respondent applied for extension of registration. The arrangement between the contractor and the respondent w.r.t construction of the said project is an internal and an independent decision of the respondent and shall in no means hinder the rights of the allottees provided under section 18 of the Act. Therefore, it can be concluded that the due date of handing over possession is 31.12.2018 as mentioned in the registration certificate and clause 7(a) of the buyer's agreement. In other words, the respondent was liable to handover possession by 31.12.2018 and the respondent has failed to handover possession by the said due date.

22. **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.

23. 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.
24. 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%.
25. **Rate of interest to be paid by complainants for delay in making payments:** The respondent contended that the complainants have defaulted in making timely payments of the instalments as per the payment plan, therefore, they are liable to pay interest on the outstanding payments.
26. 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;"*

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



of the buyer's agreement dated 17.01.2019 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 17.01.2019 to hand over the possession within the stipulated period.

29. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 17.10.2019. However, the respondent offered the possession of the unit in question to the complainants only on 11.11.2019. So, it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in terms of clause 19(10) of the Act, the complainants were obligated to take possession by 11.01.2020 (Offer of possession plus 2 months). However, the complainants have taken possession of the unit in question on 06.12.2019 and this fact has been admitted by the respondent. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 31.12.2018 till the date of handing over of possession by the respondent i.e. 06.12.2019.
30. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainants are entitled to delay possession at prescribed rate of interest i.e. 9.30% p.a. w.e.f. 31.12.2018 till the date

of handing over possession i.e., 06.12.2019 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

G.II Water seepage issues and sagging in balconies

31. **Relief sought by the complainants:** Direct the respondent to submit an affidavit stating the anticipated date of fixing of the structure and amenities of the unit and complete its construction.
32. With respect to the defects in balcony of the unit and seepage issues, the respondent is directed to correct/rectify the water seepage and balcony issue which is a serious issue within 3 months from the date of this order.

H. Directions of the authority


33. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to pay the interest at the prescribed rate i.e. 9.30% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 31.12.2018 till the date of handing over possession i.e., 06.12.2019. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per rule 16(2) of the rules.



- ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. The rate of interest chargeable from the complainants /allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delay possession charges as per section 2(za) of the Act.
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement. The respondent is also not entitled to claim holding charges from the complainants/allottees at any point of time even after being part of the builder buyer's agreement as per law settled by hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.
34. Complaint stands disposed of.
35. File be consigned to registry.


(Samir Kumar)
Member


(Dr. K.K. Khandelwal)
Chairman


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.10.2021

Judgement uploaded on 16.12.2021.