

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

Complaint no. : 2510 of 2021
First date of hearing : 29.07.2021
Date of decision : 12.10.2021

1. Pijush Kanti Biswas
 2. Sarbani Biswas
- Both RR/o: L-49D, First Floor, Block L,
Saket, New Delhi-110017.

Complainants

Versus

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

Respondents

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Nilotpal Shyam
Shri J.K. Dang

Advocate for the complainants
Advocate for the respondents

ORDER

1. The present complaint dated 21.06.2021 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 104 of reply]</p>

8.	Provision allotment letter dated	23.11.2018 [Page 27 of complaint]
9.	Unit no.	IG-03-1203, 12 th floor, tower/ building no. 03 [Page 53 of complaint]
10.	Unit measuring	1255.73 sq. ft. (Carpet area) 2025 sq. ft. (Super area) [Page 53 of complaint]
11.	Date of execution of buyer's agreement	19.12.2018 [Page 45 of complaint]
12.	Payment plan	Time linked payment plan [Page 92 of complaint]
13.	Total consideration as per statement of account dated 24.06.2021	Rs.1,33,30,137/- [Page 119 of reply]
14.	Total amount paid by the complainants as per statement of account dated 24.06.2021	Rs.1,26,71,359/- [Page 120 of reply]
15.	Due date of delivery of possession as per clause 7(a) of the said agreement i.e. the company shall offer the possession of the unit to the allottee on or before 31.12.2018 or such time as may be extended by the competent authority. [Page 61 of complaint]	31.12.2018
16.	Date of offer of possession to the complainants	11.11.2019 [Page 108 of complaint]
17.	The complainants have taken possession on	07.12.2019 [As submitted by the complainants at page 6 of complaint and as admitted by the respondents at page 11 of reply]
18.	Delay in handing over possession w.e.f. 31.12.2018 (due date of handing over possession) till 07.12.2019	11 months 7 days

	(date of handing over of possession)	
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B. Facts of the complaint

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

- i. That the respondents through their representative had approached them and represented that the respondent's residential project namely "Imperial Gardens" located at Sector-102, Dwarka Expressway, Gurugram, Haryana will effectively serve the residential purpose of complainants and their family and has the best of the amenities.
- ii. That the respondent company claimed that they have obtained a license from the Director General, Town and Country Planning, Haryana Chandigarh 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 complainants started payment from 05.11.2018 pursuant to which allotment letter was issued by the respondents on 23.11.2018 for allotment of unit no. IG-03-1203 proposed to be built at 12th floor in the said project. Subsequently, both the parties entered into buyer's agreement on 19.12.2018. 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 complainants.
- iv. That as per the buyer's agreement, the respondents agreed to sell the said unit having carpet area of 1255.73 sq. ft. for an amount of Rs.1,19,39,000/- in accordance with annexure-III of the buyer's agreement. That the buyer's agreement inter alia levies a charge of Rs.1,27,575/- towards operational charge, however, there is not even a whisper of as to what does the operation charges shall constitute, and the complainants were compelled to sign on dotted lines. Therefore, it is ex facie one-sided arbitrary and not binding on the complainants in view of law laid down by Hon'ble Supreme Court in *Pioneer Urban land & Infrastructure Ltd. Vs. Geetu Gidwani Verma and anr.* CA No. 1677 of 2019 dated 04.02.2019.

- v. That as per clause 7(a) of the buyer's agreement, the possession date for the said unit was agreed to be 31.12.2018. Clause 12 of the buyer's agreement stipulates that the respondent company, if failed to deliver the possession of the said unit within the stipulated time frame and subject to the force majeure conditions, shall pay delayed possession interest for the entire period till the date of handing over the possession in accordance with the Act. The complainants made a total payment of Rs.1,05,24,227/- towards the said unit in accordance with the demand raised by the respondent company. Despite the said payments, the respondent company failed to deliver the possession in agreed timeframe (i.e., 31.12.2018) for reasons best known to them and the respondent company never bothered to intimate reasons and reasoning for the delay to the complainants. Therefore, the respondent company has breached the sanctity of the agreement to sell i.e. buyer's agreement.
- vi. That the offer of possession was initially made to the complainants by the respondent company on 06.11.2019 pursuant to the receipt of the occupation certificate of the said tower as communicated by the respondent company. However, a revised offer of possession was also issued on 11.11.2019. The complainants took the physical possession of the said unit on 07.12.2019.

vii. That there is almost 12 months of unexplained delay in handing over the possession by the respondent company to the complainants. Therefore, the complainants have genuine grievance which require the intervention of the hon'ble authority in order to do justice with them. The respondent company is liable to pay interest for delayed period of handing over the possession i.e. from 31.12.2018 till the actual date of handing over the possession i.e., 07.12.2019 in accordance with section 18 of the Act. Hence, this complaint.

C. Relief sought by the complainants

4. The complainants are seeking the following reliefs:

- i. Direct the respondent company to pay interest at prescribed rate for the delayed period of handing over the possession calculated from the date of delivery of possession as mentioned in the buyer's agreement i.e. 31.12.2018 till the actual date of handing over the possession of the said unit i.e. 07.12.2019 on the amount paid by the complainants towards the unit no. IG-03-1203.
- ii. Declare the operational charges as illegal.
- iii. Direct the respondent to adjust the amount payable to the complainants as per prayer (i) in the amount raised vide demand dated 08.03.2021 and pay the balance amount to the complainants, if any.

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 11(4)(a) of the Act to plead guilty or not to plead guilty.

D. Reply filed by the respondents

6. The respondents have contested the complaint on the following grounds:
- i. The complainants have filed the present complaint seeking compensation and interest for alleged delay in delivering possession of the apartment booked by the complainants. It is respectfully submitted that complaints pertaining interest, compensation etc. are to be decided by the adjudicating officer under section 71 of the Act read with rule 29 of the rules and not by this hon'ble authority. The present complaint is liable to be dismissed on this ground alone.
 - ii. That the complainants were provisionally allotted apartment no. IG-03-1203 in the said project vide allotment letter dated 13.11.2018. The payment plan was voluntarily chosen by the complainants. Statement of account dated 24.06.2021 reflects the payments made by the complainants and accrued delayed payment interest.
 - iii. That respondent no.1 had registered the project under the provisions of the Act vide registration certificate bearing no. 208 of 2017 dated 15.09.2017. Thereafter, the validity of the registration of the said project had been extended by a period of one year till

31.12.2019 vide certificate dated 02.08.2019 with respect to extension of registration. That the completion of the project was delayed by the contractor, Capacite Infraprojects Ltd despite the best efforts and reminders from respondent no.1. On account of the delay by the contractor, respondent no.1 was constrained to apply for extension of registration of the project under the Act.

- iv. That in so far as tower in which the apartment in question is situated is concerned, the respondent no.1 completed construction of the same within the extended period of registration and applied for the occupation certificate in respect thereon on 11.02.2019. The occupation certificate was issued by the competent authority on 17.10.2019. Upon receipt of the occupation certificate, the respondent no.1 offered possession of the said unit to the complainants vide letter of offer of possession dated 01.11.2019, well within the 60 days period contemplated under clause 7(a) of the buyer's agreement. Thereafter, revised letter of offer of possession dated 11.11.2019 had been issued by the respondent no.1 to the complainants. It is pertinent to mention that the said unit is booked under GST free scheme but at the time of manual calculations, GST was charged on the last instalment and the same was reflected in letter dated 01.11.2019. Later on, the respondent no.1 realised that GST was not to be charged for the said unit. As a result, revised letter of offer of possession dated 11.11.2019 had been issued by the respondent no.1 to the complainants.
- v. That the complainants were called upon to remit balance amount outstanding as per the attached statement and also to complete the

necessary formalities and documentation so as to enable respondent no.1 to hand over possession of the apartment to the complainants. However, the complainants did not come forward to take possession of the apartment and also failed to remit the balance payment due and payable by the complainants, despite reminders for possession. Undertaking dated 26.11.2019 had also been executed by the complainants before obtaining possession of the said unit.

- vi. That the complainants have falsely alleged delay in offering possession of the unit by the respondent no.1. As a matter of fact, there is no delay in so far as the respondent no.1 is concerned. Furthermore, the complainants had obtained possession of the said unit on 07.12.2019. The complainants had fully satisfied themselves with regard to the measurement, location, dimensions and status of the said unit before accepting the possession of the said unit. The contractual relationship between the complainants and the respondent is governed by the terms and conditions of the buyer's agreement dated 19.12.2018. Clause 7 of the buyer's agreement provides that subject to force majeure conditions and delay caused on account of reasons beyond the control of the respondent, and subject to the allottee not being in default of any of the terms and conditions of the same, the respondent expects to deliver possession of the apartment within a period of 60 days from the date of issuance of the occupation certificate by the competent authority. The occupation certificate was issued by the competent authority on 17.10.2019 and the offer of possession was

made on 01.11.2019. Thus, there is no delay in so far as the respondent no.1 is concerned.

- vii. That it is not denied that respondent no.1 had raised any demand dated 08.03.2021. It is not denied that the demand for operational charges had also been raised by respondent no.1. It is pertinent to mention that operational charges include electricity meter charges, water and sewerage charges etc. The respondent charges operational charges at the rate of Rs. 63/- per square feet. The aforesaid demands had been validly and legally raised by respondent no. 1 in consonance with the terms and conditions incorporated in the buyer's agreement. It is pertinent to mention that as on date, the complainants are liable to make payment of an amount of Rs.14,17,945/- to respondent no.1.
- viii. That the respondent no.1 had been prevented from timely implementation of the project by reasons beyond its power and control. It is submitted that the respondent no.1 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.

- ix. That several allottees have defaulted in timely remittance of payment of instalments which was an essential, crucial and an indispensable requirement for conceptualisation and development of the project in question. Furthermore, when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially whereas enormous business losses befall upon the respondent no.1. The respondent no.1, despite default of several allottees, has diligently and earnestly pursued the development of the project in question and has constructed the project in question as expeditiously as possible. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

E. Jurisdiction of the authority

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



E.I Territorial jurisdiction

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

E.II Subject-matter jurisdiction

9. 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.

10. 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 of the authority

F.1 Delay possession charges

11. **Relief sought by the complainants:** Direct the respondent company to pay interest at prescribed rate for the delayed period of handing over the possession calculated from the date of delivery of possession as mentioned in the buyer's agreement i.e. 31.12.2018 till the actual date of handing over the possession of the said unit i.e. 07.12.2019 on the amount paid by the complainants towards the unit no. IG-03-1203.
12. 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."

13. Clause 7(a) of the buyer's agreement dated 19.12.2018 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."

14. **Due date of handing over possession:** As per clause 7(a) of the buyer's agreement, the respondents were under obligation to offer the possession of the unit to the allottee on or before 31.12.2018 or such time as may be extended by the competent authority.
15. The counsel for the respondents submitted that the project in question is registered vide no. 208 of 2017 and the same was initially valid till 31.12.2018. However, due to unavoidable circumstances on account of delay by the contractor, the respondents were constrained to seek extension of registration and the same was extended till 31.12.2019. The occupation certificate was granted by the competent authority on 17.10.2019 and the possession was offered on 11.11.2019, therefore,

there is no delay in offering possession in so far as respondents are concerned.

16. 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.

17. 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.

18. **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.

19. 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.
20. 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%.
21. **Rate of interest to be paid by complainants for delay in making payments:** The respondents contended that the complainants have defaulted in making timely payments of the instalments as per the payment plan, therefore, they are liable to pay interest on the outstanding payments.
22. 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;”*

23. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 9.30% by the respondents/promoters which is the same as is being granted to the complainants in case of delay possession charges. Also, the complainants are directed to pay outstanding dues, if any, after adjustment of delayed payment interest for the delayed period to be paid by the respondents/promoters under proviso to section 18(1) read with rule 15 of the rules.

24. 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 19.12.2018, 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 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 respondents to offer physical possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 19.12.2018 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 19.12.2018 to hand over the possession within the stipulated period.

25. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 17.10.2019. However, the respondents offered the possession of the unit in question to the complainants only on 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 07.12.2019 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. 07.12.2019.



26. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondents is established. As such the complainants are entitled to delay possession at prescribed rate of interest i.e. 9.30% p.a. w.e.f. 31.12.2018 till the date of handing over possession i.e., 07.12.2019 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

F.II Operational charges

27. **Relief sought by the complainants:** Declare the operational charges as illegal.

28. The complainants submitted that the buyer's agreement inter alia levies a charge of Rs.1,27,575/- towards operational charge, however, there is not even a whisper of as to what does the operation charges shall constitute, and the complainants were compelled to sign on dotted lines. On the contrary, the respondents submitted that the operational charges include electricity meter charges, water and sewerage charges etc. The respondents charged operational charges at the rate of Rs. 63/- per square feet and the same is in consonance with the terms and conditions incorporated in the buyer's agreement. Therefore, the complainants are liable to make payment of an amount of Rs.14,17,945/- to respondent no.1.

29. The authority is of the view that the definition of term 'total price' as mentioned in the buyer's agreement includes operational charges of



Rs.1,27,575/-. Also, the said amount has been mentioned in the payment plan annexed with the buyer's agreement. The respondents have admitted that the same has been charges towards the electricity meter charges, water and sewerage charges etc. The authority in **4031 of 2019** in complaint titled as *Varun Gupta V/s Emaar MGF Land Ltd.* pronounced on 12.08.2021 has held that promoter would be entitled to recover the actual charges paid to the concerned departments' from the complainant/allottee on pro-rata basis on account of electricity connection, sewerage connection and water connection, etc., i.e., depending upon the area of the flat allotted to the complainant vis-à-vis the area of all the flats in this particular project. The complainant would also be entitled to proof of such payments to the concerned departments along with a computation proportionate to the allotted unit, before making payments under the aforesaid heads. Therefore, in light of the abovesaid order, the complainants are liable to pay the operational charges.

G. Directions of the authority

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

- i. The respondents are directed to pay the interest at the prescribed rate i.e. 9.30% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 31.12.2018 till the date of handing over possession i.e., 07.12.2019. 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 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(z) of the Act.
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The respondents shall not charge anything from the complainants which is not the part of the buyer's agreement. The respondents are also not entitled to claim holding charges from the complainants/allottees at any point of time even after being part of the builder buyer's agreement as per law settled by hon'ble


Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

31. Complaint stands disposed of.

32. 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.

HARERA
GURUGRAM