

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

Complaint no. : 6001 of 2019
Date of filing complaint: 05.12.2019
First date of hearing : 18.12.2019
Date of decision : 06.10.2021

1. Shri Rajesh Mittal R/O: - Flat No. 5B, Building No. 8, The Hibiscus, Sector 50, Gurugram, Haryana-122018	Complainant
Versus	
1. M/s Imperia Structures Ltd. Regd. Office at: - A-25, Mohan Cooperative, Industrial Estate, Mathura Road, New Delhi-110044	Respondent

CORAM:	
Shri. Samir Kumar	Member
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Ms. Vridhi Sharma (Advocate)	Complainant
Ms. Tanya Swarup (Advocate)	Respondent

Ex-PARTE ORDER

1. The present complaint has been filed by the complainant/allottee 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 under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of unit details, 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.	Name and location of the project	"Imperia Mindspace", Sector-62, Gurugram
2.	Project area	8.35625 acre
3.	Nature of the project	IT park colony
4.	DTCP license no. and validity status	86 of 2010 dated 23.10.2010 valid till 22.10.2020
5.	Name of the license holder	M/s Bakir Real Estate Pvt. Ltd. And Ors.
6.	Name of the collaborator	DLF New Gurgaon Offices Developers Pvt. Ltd.
7.	RERA registered/ not registered	Registered Registered vide 240 of 2017 dated 25.09.2017
8.	RERA registration valid up to	31.12.2020



9.	Date of approval of building plan	04.12.2015
10.	Unit no.	FC-125, ground floor, tower- A (annexure- VI on page no. 15 of the complaint)
11.	Unit area	550 sq. ft. (annexure- VI on page no. 15 of the complaint)
12.	Date of execution of unit buyer's agreement	09.11.2016 (annexure- VI on page no. 13 of the complaint)
13.	Payment plan	Flexi payment plan (annexure- VI on page no. 41 of the complaint)
14.	Total consideration	Rs. 66,08,250/- (annexure- VI on page no. 18 of the complaint)
15.	Total amount paid by the complainant	Rs. 33,41,250/- (annexure- VI on page no. 22 of the complaint)
16.	Possession clause	12. That the allottee shall be handed over possession of the unit from the company only after the allottee has fully discharged all his obligations and entire total price (including interest due, if any, thereon) against the unit has been paid and all other applicable charges/dues/taxes of the allottee have been

paid and conveyance deed has been executed and registered in his favour. The company shall hand over possession of the unit to the allottee provided the allottee is not in default of any of the terms and conditions of this agreement and has complied with all provisions, formalities, documentation, etc. as may be prescribed by the company in this regard. The allottee shall be liable to pay the maintenance charges from the date referred in the notice for taking possession of the unit. After taking the possession of the unit, it shall be deemed that the allottee has satisfied himself with regard to the construction or quality of workmanship.

17.	Due date of delivery of possession	04.12.2017 (Calculated from the date of approval of building plan as per the similarly situated complaint i.e., 377 of 2021)
18.	Occupation Certificate	28.11.2019 [for tower- A (ground floor to 19 th floor)]
19.	Offer of possession	Not Offered

20.	Delay in handing over of possession till OC of the subject unit plus two months i.e., 28.01.2020	2 years, 1 month and 24 days.
-----	--	-------------------------------

B. Facts of the complaint

3. That the respondent is a Limited Company in the business of real estate development. The respondent had approached the complainant through its broker M/s Win World Realty through its authorized representative Mr. Ritesh Aggarwal to sell the shop no. FC-125 having super area of 51.10 sq. meter situated at ground floor of tower "A" (hereinafter referred as the said 'unit') in the commercial project being promoted and developed by the respondent under the name and style of "Imperia Mindspace", situated at sector 62, Gurugram (hereinafter referred as the said 'project'). The booking form for allotment of the said unit was submitted by the complainant on 18.09.2016 along with booking amount Rs. 5,00,000/- vide cheque no. 161797 dated 18.09.2016 drawn on HSBC Bank. At the time of booking, it was promised by the respondent that the possession will be handed over within a period of 3 years from the date of execution of unit buyer's agreement. (Hereinafter referred as the 'UBA'). However, while executing the UBA dated 06.11.2016 the respondent intentionally did not mention the date/ period of handing over the possession of the said unit.

4. That in furtherance to the aforesaid booking the complainant paid Rs. 20,00,000/- vide cheque bearing no. 349632 dated 28.10.2016 drawn on HSBC Bank. Thereafter, the said unit was allotted to the complainant in the said project.
5. That the complainant further paid a sum of Rs. 9,91,606/- vide cheque no. 349631 dated 04.11.2016 drawn on HSBC Bank. A UBA, dated 09.11.2016 was executed between the parties, wherein the respondent agreed to pay the assured/ committed return to the complainant @ Rs. 54/- per sq. ft. per month i.e., Rs. 29,700/- till the date of possession. It was agreed that if respondent fails to in deliver the possession of said shop within three years from the date of execution of said agreement i.e., 08.09.2019, then respondent will pay the additional assured return @ Rs. 81/- per sq. ft. per month (total assured return @ Rs. 135/- per sq. ft. per month) to the complainant till the date of actual possession. On the premise of assured return, the complainant booked the said unit under a flexi payment plan.
6. That the respondent demanded of Rs. 29,70,000/- along with GST @ 8% (12%- 4%) vide its letter dated 10.11.2017 and the complainant made the payment vide cheque no. 802517 dated 27.11.2017. After receipt of entire basic sale price of Rs. 63,11,250/- by November 2017. The respondent started making payment of Rs. 29,700/- per month to complainant towards assured return and have paid the same to from



December 2017 to April 2018 and further June 2018 to August 2018 and thereafter no payment received by the complainant. The assured return due for May 2018 and from September 2018 onwards is still unpaid. Even after continuous follow-ups, the respondent has failed to comply with its contractual obligations as agreed in annexure A -1 of the agreement.

7. That till date the said unit is not ready for possession as the said project is still under-construction and far from completion. The respondent holds the amounts payable to the complainant on account of assured return. The complainant is suffering financial losses due to delay in possession of the said unit and non-payment of due assured return amounts.
8. That the said project is registered with the authority vide registration certificate no. 240 of 2017 dated 25.09.2017, wherein the respondent safely secured one-year extended project completion date/ timeline i.e., 31.12.2010, while the respondent promised/committed to the complainant to deliver the possession of said unit by 08.11.2019.
9. That the complainant issued a legal notice dated 20.06.2019 through his advocates M/s PNS Associates but the respondent has not reverted to the aforesaid legal notice.

C. Relief sought by the complainant.

10. The complainant has sought following relief(s):
- (i) Direct the respondent to pay delay possession charges for the delay of every month at prescribed rate.
11. The authority issued a notice dated 06.12.2019 of the complaint to the respondent by speed post and also on the given email address at care@imperiastructures.com .The delivery reports have been placed in the file. Thereafter, a reminder notice dated 18.06.2021 for filing reply was sent to the respondent on email address at harpreet@imperiastructures.com . Despite service of notice, the respondent has preferred not to file the reply to the complaint within the stipulated period. Accordingly, the authority is left with no other option but to decide the complaint ex-parte against the respondent.
12. Copies of all the relevant do 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 and submission made by the parties.

E. Jurisdiction of the authority

13. The respondent has raised an objection regarding jurisdiction of authority to entertain the present complaint. The authority observes that it has territorial as well as

subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.

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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the relief sought by the complainant.

F.I Delay possession charges.

Relief sought by the complainant: Direct the respondent to pay delay possession charges for the delay of every month at prescribed rate.

14. In the present complaint, the complainant intends 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."

15. Clause 12 of the unit buyer's agreement dated 09.11.2016, is silent w.r.t the stipulated time of delivery of possession of the subject unit and the same is reproduced below:

That the Allottee shall be handed over possession of the Unit from the Company only after the Allottee has fully discharged all his obligations and entire Total Price (including interest due, if any, thereon) against the Unit has been paid and all other applicable charges/dues/taxes of the Allottee have been paid and Conveyance Deed has been executed and registered in his favour. The Company shall hand over possession of the Unit to the Allottee provided the Allottee is not in default of any of the terms and conditions of this Agreement and has complied with all provisions, formalities, documentation, etc. as may be prescribed by the Company in this regard. The Allottee shall be liable to pay the Maintenance Charges from the date referred in the notice for taking possession of the Unit. After taking the possession of the Unit, it shall be deemed that the Allottee has satisfied himself with regard to the construction or quality of workmanship.

16. A unit buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builders/promoters and buyers/allottees are protected candidly. Unit buyer's agreement lays down the terms that govern the sale of different kinds of properties like residentials, commercials etc. between the buyer and builder.



It is in the interest of both the parties to have a well-drafted agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the right of the buyers/allottees in case of delay in possession of the unit.

17. The authority has gone through the possession clause of the agreement and observed that the said clause is silent w.r.t the stipulated time of delivery of the possession. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that nothing w.r.t timeline of delivery of possession has been mentioned. The authority is of the view that it is a wrong trend followed by the promoter and it is their unethical behaviour and dominant position that needs to be struck down. It is settled proposition of law that one cannot get the advantage of his own fault. The incorporation of such clause in the unit buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in



possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

18. The respondent promoter have not mentioned anything w.r.t the timeline of handing over of possession in the above-mentioned clause. The said clause is silent in this respect hence it is vague in this regard.
19. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges, 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.



20. The legislature in its wisdom in the subordinate legislation under the provision of 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.
21. 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., 06.10.2021 is 7.30% p.a. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30% p.a.
22. The definition of term 'interest' as defined under section 2(z a) 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 complainant shall be charged at the prescribed rate i.e., 9.30% p.a. by the respondent/promoter which is the same as is being granted to the complainant in case of delay possession charges.
24. On consideration of the circumstances, the evidence and other record and submissions made by 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, the clause 12 of the unit buyer's agreement is silent w.r.t the stipulated time of delivery of possession. So, the authority is of the view that due date of possession should be calculated in the present matter as per the timelines of possession being promised in the similarly situated complaints. The date of approval of the building plan for the subject project is 04.12.2015. By virtue of MOU executed between the parties on 02.11.2011 in complaint no. 377 of 2021, the possession of the booked unit was to be delivered within a period of two years after approval of building plans of the said project from the competent authority which comes out to be 04.12.2017. On same analogy, the due date of possession in the present matter is also taken as 04.12.2017.



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. These 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 04.12.2017 till the date of obtaining occupation certificate from the competent authority (28.11.2019) plus two months i.e., 28.01.2020 as per the provisions of section 19(10) of the Act.
26. Accordingly, non-compliance of the mandate contained in section 11(4) (a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such complainant is entitled to delayed possession charges at the prescribed rate of interest i.e., 9.30% p.a. for every month of delay on the amount paid by the complainant to the respondent from the due date of possession i.e., 04.12.2017 till the date of obtaining occupation certificate from the competent authority (28.11.2019) plus two months i.e.,

28.01.2020 as per the provisions of section 18(1) of the Act read with rule 15 of the rules and section 19 (10) of the Act.


H. Directions of the authority


27. 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 interest at the prescribed rate of 9.30% p.a. for every month of delay from the due date of possession i.e., 04.12.2017 till the date of obtaining occupation certificate from the competent authority plus two months i.e., 28.01.2020 as per section 19 (10) of the Act.
- II. The arrears of such interest accrued from 04.12.2017 till 28.01.2020 shall be paid by the promoter to the allottee within a period of 90 days from date of this order.
- III. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- IV. The rate of interest chargeable from the allottee 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 delayed possession charges as per section 2(za) of the Act.

- V. The respondent shall not charge anything from the complainant which is not the part of the agreement.
- VI. The cost imposed during the proceedings on either of the party to be a part of the decree sheet.
28. Complaint stands disposed of.
29. File be consigned to registry.


(Samir Kumar)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.10.2021

JUDGEMENT UPLOADED ON 26.12.2021