

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

Complaint no. : 3020 of 2020
Complaint filed on : 06.10.2020
First date of hearing : 02.12.2020
Date of decision : 01.02.2022

1. Mr. Ravi Bhatia
2. Ms. Sujata Sharma
Both RR/o: Hauffstr. 8 90491, Nuremberg Germany.

Complainants

Versus

M/s Emaar India Ltd.
(Formerly known as Emaar MGF Land Ltd.)
Address: Emaar MGF Business Park,
M.G. Road, Sector 28, Sikandarpur Chowk,
Gurugram, Haryana.

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Shri Sukhbir Yadav
Ms. Kanika Gomber

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint 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 allottees as per the agreement for sale executed inter se them.

2. Since, the buyer's agreement has been executed on 02.07.2010 i.e. prior to the commencement of the Act ibid, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of statutory obligation on part of the promoter/respondent in terms of section 34(f) of the Act ibid.

A. Project and unit related details

3. 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	Emerald Floors Premier at Emerald Estate, Sector 65, Gurugram
2.	Project area	25.499 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	06 of 2008 dated 17.01.2008 Valid/renewed up to 16.01.2025
5.	Name of licensee	Active Promoters Pvt. Ltd. and 2 others C/o Emaar MGF Land Ltd.
6.	HRERA registered/ not registered	"Emerald Estate" registered vide no. 104 of 2017 dated 24.08.2017 for 82768 sq. mtrs.
7.	HRERA registration valid up to	23.08.2022



8.	Occupation certificate	15.05.2020 [annexure G, page 113 of reply]
9.	Provisional allotment letter dated	10.03.2010 [annexure C, page 42 of reply]
10.	Unit no.	EFP-02-0501, 5 th floor, tower no. 2 [annexure C1, page 29 of complaint]
11.	Unit measuring	1650 sq. ft.
12.	Date of execution of buyer's agreement	02.07.2010 [annexure C1, page 27 of complaint]
13.	Payment plan	Construction linked payment plan [annexure C1, page 60 of complaint]
14.	Total consideration as per statement of account dated 22.10.2020 at page 125 of reply	Rs.76,29,117/-
15.	Total amount paid by the complainants as per statement of account dated 22.10.2020 at page 126 of reply	Rs.78,23,448/-
16.	Due date of delivery of possession as per clause 11(a) of the said agreement i.e. 36 months from the date of execution of buyer's agreement (02.07.2010) plus 3 months grace period for applying and obtaining the completion certificate/ occupation certificate in respect of the unit and/or the project. [Page 41 of complaint]	02.10.2013
17.	Date of offer of possession to the complainants	26.05.2020 [annexure H, page 116 of reply]
18.	Delay in handing over possession w.e.f. 02.10.2013 till 26.07.2020 i.e. date of offer of possession (26.05.2020) + 2 months	6 years 9 months 24 days

19.	Delay compensation already paid by the respondent in terms of the buyer's agreement as per statement of account dated 22.10.2020 at page 126 of reply	Rs. 6,16,784/-
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B. Facts of the complaint

4. The complainants have made the following submissions in the complaint:
- i. That vide application dated 08.02.2010, the complainants booked the subject unit in the project in question. The buyer's agreement was signed inter se parties on 02.07.2010 and as per clause 11(a) of the buyer's agreement, the respondent had agreed to handover the possession of the subject unit within 36 months from the date of execution of buyer's agreement with a grace period of 3 months i.e. October 2013. However, till date the possession of the said unit has not been handed over to the complainants despite making all requisite.
 - ii. That the complainants have been sending mails to the respondent to know the progress of construction and to know the date of possession but no definite commitment was shown for timely completion of the project and no appropriate action was taken to address the concern and grievances of the complainants. In fact, the respondent made several assurances in last few years about timely completion of the project as well as offered several new dates of completion.



iii. That the complainants had booked the said unit for their old parents to have a comfortable life in their old age, but due to delay in handing over the possession, the complainant's parents had to pay huge rent due to which they have suffered mental and financial agonies. The complainants assess the said compensation to the tune of Rs.1,00,00,000/-. Hence, this complaint.

C. Relief sought by the complainants

5. The complainants have filed the present complaint for seeking following reliefs:

i. Direct the respondent to hand over the possession of the subject unit and to pay interest at the rate of 24% p.a. for the delayed period in handing possession of the said unit as per the Act.

D. Reply filed by the respondent

6. The respondent has raised certain preliminary objections and has contested the present complaint on the following grounds:

i. That the complainants have filed the present complaint seeking, inter alia, possession and interest @24% p.a. for alleged delay in handing over the property. It is respectfully submitted that such complaints pertaining to interest and compensation 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 project in question is neither registered under the Act nor is the same required to be registered in view of the rules of 2017. In the present case, the respondent had applied for the occupation certificate (OC) in respect of the tower/apartment in question was made on 30.06.2017, i.e. before the notification of the rules of 2017. The occupation certificate was thereafter issued on 08.01.2018. However, as the Fire NOC was awaited for a few blocks (including the unit in question), thereafter the respondent, vide letter dated 12.02.2018, informed the DG-TCP, Haryana that it has not acted upon the OC and has not offered the units of those towers for possession for which Fire NOC is awaited. Thus, the project in question is not an 'ongoing project' under rule 2(1)(o) of the rules. The project does not require registration and consequently has not been registered under the provisions of the Act. This hon'ble authority does not have the jurisdiction to entertain and decide the present complaint. The present complaint is liable to be dismissed on this ground alone.
- iii. That the present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 20.02.2010. That the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to

coming into effect of the Act. The provisions of the Act relied upon by the complainants for seeking interest cannot be called in to aid in derogation and ignorance of the clauses of the Agreement. The interest is compensatory in nature and cannot be granted in derogation and ignorance of the clauses of the agreement.

- iv. That the complainants vide application form dated 08.02.2010 applied to the respondent for provisional allotment of the unit in the said project "Emerald Floor Premier" situated in Emerald Estate, Sector 65, Gurgaon, developed by the respondent. The said booking application contained detailed terms and conditions and was subject to buyer's agreement to be executed later. Pursuant thereto, the complainants were allotted a unit bearing no. EFP-02-0501, in the project vide provisional allotment letter dated 10.03.2010. Subsequently, buyer's agreement was executed between the complainants and the respondent on 02.07.2010.
- v. That the respondent on receipt of the occupation certificate i.e., on 15.05.2020, offered possession of the said unit to the complainants vide offer of possession letter dated 26.05.2020 subject to making payments and submission of necessary documents. However, till date the complainants have failed to comply with the requirements as detailed in the offer of possession notice and take possession of the subject unit. It is pertinent to point out the malafide intent of the complainants

who despite being offered possession and compensated for the delay in possession, in order to unjustly enrich themselves have filed the instant frivolous complaint. That the complainants have already been given compensation of Rs.6,16,784/- towards the delayed possession. Further, the complainants have also been given the benefit of Rs.85,083/- towards early payment rebate. The respondent has already offered possession of the unit in question along with compensation for delay and therefore no cause of action can be construed to have arisen in favour of the complainants to file a complaint for seeking further compensation by way of interest when compensation payable under the agreement has already been credited to the complainants by the respondent.

- vi. That the complainants had opted for construction linked payment plan at the time of booking of the unit in question and had agreed and undertaken to pay the instalments as and when demanded by the respondent. The complainants were provided with the terms and conditions of provisional allotment and the complainants were given the opportunity to familiarize themselves with the same. Further at time of execution of the agreement, it was also in the knowledge of the complainants that subject to timely payment of all amounts payable by the complainants and subject to reasons beyond the control of the respondent, possession of the

unit was proposed to be offered by the respondent, within 36 months from the date of execution of the buyer's agreement along with 3 months grace period.

- vii. That the project got delayed on account of various reasons which were/are beyond the power and control of the respondent and hence, the respondent cannot be held responsible for the same. *Firstly*, there were defaults on the part of the contractor (M/s B L Kashyap and Sons). The contractor was not able to meet the agreed timelines for construction of the project. The progress of the work at the project site was extremely slow on account of various defaults on the part of the contractor, such as failure to deploy adequate manpower, shortage of material etc. and hence, the respondent cannot be held responsible for the same. However, due to the impending BL Kashyap (contractor) issue of non-performance, the construction of the second staircase could not be started as well. Also, the arbitration proceedings titled as B L Kashyap and Sons Vs Emaar MGF Land Ltd. are pending before Justice A P Shah (retd.), Sole arbitrator and vide order dated 27.04.2019, the hon'ble arbitrator gave liberty to the respondent to appoint another contractor w.e.f. 15.05.2019. *Secondly*, the National Building Code (NBC) was revised in the year 2016 and in terms of the same, all high-rise buildings (i.e., buildings having height of 15 mtrs. and above), irrespective of the area of each

floor, are now required to have two staircases. Furthermore, it was notified vide Gazette published on 15.03.2017 that the provisions of NBC 2016 supersede those of NBC 2005. The respondent had accordingly sent representations to various authorities identifying the problems in constructing a second staircase. Eventually, so as to not cause any further delay in the project and so as to avoid jeopardising the safety of the occupants of the buildings in question, the respondent had taken a decision to go ahead and construct the second staircase. It is expected that the construction of the second staircase will be completed in a years' time. Thereafter, upon issuance of the occupation certificate and subject to the force majeure conditions, possession of the unit has been offered to the complainants.

- viii. That several allottees have defaulted in timely remittance of payment of installments which was an essential, crucial and an indispensable requirement for conceptualization 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. The respondent, 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. Therefore, there is no default or lapse on the part of the respondent and there is no equity in favour of the complainant. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainants are totally baseless. 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 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. Section 11(4)(a) of the Act 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) The promoter shall-

- (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;*

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 on the objections raised by the respondent

F.I Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act

11. The respondent contended that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the buyer's agreement executed between

the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The respondent further submitted that the provisions of the Act are not retrospective in nature and the provisions of the Act cannot undo or modify the terms of buyer's agreement duly executed prior to coming into effect of the Act.

12. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of *Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)* which provides as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter....."

122. *We have already discussed' that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."*

13. Also, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

14. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the

agreed terms and conditions of the buyer's agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of the Act and are not unreasonable or exorbitant in nature.

F.II Application for keeping in abeyance as moved by the respondent

15. The counsel for the respondent has moved an application for keeping the proceedings in abeyance in compliance of orders passed by the Hon'ble High Court in CWP no. 19958 of 2017 titled as "**Gurgaon Citizens Council and Anr. Versus State of Haryana & ors.**" and in appeal no. 35 of 2021 titled as **Emaar India Limited Versus Simmi Sikka & Anr.**, the appeal is pending before High Court. In respect of the aforesaid application, the authority vide order dated 12.10.2021 had directed the respondent to file an affidavit with respect to the date of filing the application for obtaining occupation certificate with the competent authority particularly of the tower in which the unit in question of the complainants is located.
16. Vide order dated 22.10.2021, the authority has imposed a penalty of Rs.10,000/- upon the respondent due to non-compliance of order dated 12.10.2021 and in case the respondent failed to file an affidavit within a period of 15 days, an additional penalty of Rs.10,000/- per day was to be imposed upon the respondent. The counsel for the respondent has moved an application dated 25.10.2021 for waiver of

penalty of Rs.10,000/- imposed vide order dated 22.10.2021 for non-compliance of order dated 12.10.2021. The application of the respondent for waiver of penalty is disallowed and the respondent is directed to deposit penalty of Rs.10,000/- with the authority for not complying with the orders of the authority dated 12.10.2021.

17. The counsel for the respondent has filed an affidavit dated 25.10.2021 with the registry of the authority stating that the respondent had applied for the occupation certificate on 30.06.2017 in relation to tower no.2 wherein the apartment in question is situated and occupation certificate of the said tower was received on 15.05.2020.
18. The authority finds no merit in the affidavit filed by the respondent as it is evident from entry no. 51 of the statement of account dated 22.10.2020 which is in respect of "completion of internal flooring and wall paint including GST" which was demanded on 06.10.2017. It implies that the respondent has made an incomplete application for obtaining occupation certificate on 30.06.2017 and project falls within the category of on-going project. In the light of fire services NOC, the authority has no hitch in proceeding with the complaint as such.

G. Findings on the relief sought by the complainants

G.I Possession and delay possession charges

19. **Relief sought by the complainants:** Direct the respondent to hand over the possession of the subject unit and to pay interest at the rate of

24% p.a. for the delayed period in handing possession of the said unit as per the Act.

20. 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."

21. Clause 11(a) of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

"11. POSSESSION

(a) Time of handing over the Possession

*Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the Unit within **36 months from the date of execution of Buyer's Agreement**. The Allottee(s) agrees and understands that the Company shall be entitled to **a grace period of 3 months, for applying and obtaining the occupation certificate in respect of the Unit and/or the Project.**" (Emphasis supplied)*

22. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainants

not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. 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 even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment time period for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject floor and to deprive the allottees of their 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.

23. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 36 months from the date of execution of agreement and it is further provided in agreement that promoter shall be entitled to a grace period of three months for applying and obtaining occupation certificate in respect of said floor. The buyer's agreement was executed inter se parties on 02.07.2010. The period of 36 months expired on 02.07.2013. As a matter of fact,

the promoter has not applied to the concerned authority for obtaining occupation certificate within the time limit prescribed by the promoter in the buyer's agreement. As per the settled law one cannot be allowed to take advantage of his own wrong. Accordingly, this grace period of 3 months cannot be allowed to the promoter at this stage. Therefore, the due date of possession comes out to be 02.07.2013.

24. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the rate of 24% p.a. However, 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 (-) 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.

25. The legislature in its wisdom in the subordinate legislation under the 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.

26. Taking the case from another angle, the complainants-allottees were entitled to the delayed possession charges/interest only at the rate of Rs.5/- per sq. ft. per month of super area as per clause 13(a) of the buyer's agreement for the period of such delay; whereas, the promoter was entitled to interest @ 24% per annum at the time of every succeeding instalment from the due date of instalment till the date of payment as per clause 1.2(c) of the buyer's agreement. The functions of the authority are to safeguard the interest of the aggrieved person, may be the allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of his dominate position and to exploit the needs of the home buyers. This authority is duty bound to take into consideration the legislative intent i.e., to protect the interest of the consumers/allottees in the real estate sector. The clauses of the buyer's agreement entered into between the parties are one-sided, unfair and unreasonable with respect to the grant of interest for delayed possession. There are various other clauses in the buyer's agreement which give sweeping powers to the promoter to cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the buyer's agreement are ex-facie one-sided, unfair and unreasonable, and the same shall constitute the unfair trade practice

on the part of the promoter. These types of discriminatory terms and conditions of the buyer's agreement will not be final and binding.

27. 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., 01.02.2022 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.

28. **Rate of interest to be paid by complainants/allottees for delay in making payments:** 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;"

29. 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 delayed possession charges.

30. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, 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 11(a) of the buyer's agreement executed between the parties on 02.07.2010, possession of the said unit was to be delivered within a period of 36 months from the date of execution of the buyer's agreement and it is further provided in agreement that promoter shall be entitled to a grace period of 3 months for applying and obtaining occupation certificate in respect of said floor. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 02.07.2013. In the present case, the complainants were offered possession by the respondent on 26.05.2020 after obtaining occupation certificate dated 15.05.2020 from the competent authority. 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 02.07.2010 executed between the parties.
31. 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 15.15.2020. However, the respondent offered the possession of the unit in question to the complainants only on 26.05.2020, 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 the interest of natural justice, they should be given 2 months' time from the date of offer of possession. These 2 months' of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they have 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. 02.07.2013 till the expiry of 2 months from the date of offer of possession (26.05.2020) which comes out to be 26.07.2020.

32. The counsel for the complainants has submitted that the father of the complainant is 90 years old and due to failure on the part of the respondent to hand over the possession of the unit, they have to change the accommodation for 5 to 6 times. Further it has been submitted by the counsel for the complainants that despite paying more than the total sale consideration, the respondent has failed to hand over the physical possession of the unit in question to the

complainants. The authority observes that the respondent has offered the possession of the allotted unit on 26.05.2020 after receipt of OC from the competent authority on 15.05.2020. Also, it is evident from the statement of account dated 22.10.2020 that the complainants have paid an amount of Rs.78,23,448/- against the total sale consideration of Rs.76,29,117/-. Considering the aforesaid fact, the respondent is directed to hand over the physical possession of the unit to the complainants within a period of 15 days from the date of this order. The respondent is further directed not to place any condition or ask the complainants to sign an indemnity of any nature whatsoever, which is prejudicial to the rights of the complainants at the time of handing over of possession.

33. 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 charges at prescribed rate of the interest @ 9.30 % p.a. w.e.f. 02.07.2013 till 26.07.2020 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

34. Also, the amount of Rs.6,16,784/- (as per statement of account dated 22.10.2020) so paid by the respondent to the complainants towards compensation for delay in handing over possession in terms of the buyer's agreement shall be adjusted towards the delay possession

charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.

H. Directions of the authority


35. 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. 02.07.2013 till 26.07.2020 i.e. expiry of 2 months from the date of offer of possession (26.05.2020). 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. Also, the amount of Rs.6,16,784/- so paid by the respondent to the complainants towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.
- iii. The respondent is directed to hand over the physical possession of the subject unit to the complainants within a period of 15 days from the date of this order.

- iv. The respondent is further directed not to place any condition or ask the complainants to sign an indemnity of any nature whatsoever, which is prejudicial to the rights of the complainants at the time of handing over of possession.
- v. 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 buyer's agreement as per law settled by hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

36. Complaint stands disposed of.
37. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Dated: 01.02.2022