

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

Complaint no : 1258 of 2022  
Date of decision : 31.05.2022

1. Mrs. Indira Rani
2. Mr. Mohit Goel

**Both Residence :-** Flat No. 350, Sector-A, Pocket-C,  
Vasant Kunj, New Delhi-110070.

**Complainants**

Versus

M/s Emaar MGF Land Ltd.  
**Address:** Emaar MFG 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 Nipun Rao  
Shri Harshit Batra

Advocate for the complainants  
Advocates for the respondent

**ORDER**

1. The present complaint dated 21.03.2022 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:

| Sr. No. | Particulars                            | Details   |
|---------|--|---|
| 1.      | Name of the project                    | Emerald Floors Premier at Emerald Estate, Sector 65, Gurugram, Haryana  |
| 2.      | Area of the project                    | 25.499 acres  |
| 3.      | Nature of the project                  | Group housing colony  |
| 4.      | DTCP license no.                       | 06 of 2008 dated 17.01.2008   |
|         | Validity of license                    | 16.01.2021  |
|         | Licensee                               | Active Promoters Pvt. Ltd. and 2 others   |
|         | Area for which license was granted     | 25.499 acres  |
| 5.      | HRERA registered/not registered        | <b>Registered</b> vide no. 104 of 2017 dated 24.08.2018 [For 82768 sq. mtrs.]   |
|         | Validity of registration               | 23.08.2022  |
| 6.      | Provisional allotment letter dated     | 20.09.2011<br>[page 31 of reply]  |
| 7.      | Date of execution of buyer's agreement | 05.03.2012<br>[page 37 of reply]  |
| 8.      | Unit no.                               | EFP-III-530301,   |
| 9.      | Area of the unit                       | 1975 sq. ft.  |
| 10.     | Possession clause                      | <p><b>11. POSSESSION</b></p> <p><b>(a) Time of handing over the Possession</b></p> <p><i>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</i></p> |



|     |  |  |
|-----|--|--|
|     |  | <p>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 <b>24 months from the date of execution of Buyer's Agreement</b>. The Allottee(s) agrees and understands that the Company shall be entitled to a <b><u>grace period of 3 months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project</u></b>.</p> <p>(Emphasis supplied)<br/>[page 46 of reply]</p> |
| 11. | Due date of possession   | 05.03.2014<br>[ <b>Note:</b> Grace period is not included]   |
| 12. | Total sale consideration as per statement of account dated 08.01.2021 at page 71 of complaint  | Rs.1,35,93,978/-   |
| 13. | Total amount paid by the complainants as per statement of account dated 08.01.2021 at page 71 of complaint   | Rs.1,35,93,978/-   |
| 14. | Occupation certificate   | 11.11.2020<br>[page 140 of reply]  |
| 15. | Offer of possession  | 18.12.2020<br>[page 143 of reply]  |
| 16. | Delay compensation already paid by the respondent in terms of the buyer's agreement as per statement of account dated 08.01.2021 at page 71 of complaint | Rs.6,86,326/-  |



|     |                             |                                   |
|-----|-----------------------------|-----------------------------------|
| 17. | Unit handover letter dated  | 08.04.2021<br>[page 153 of reply] |
| 18. | Conveyance deed executed on | 30.06.2021<br>[page 159 of reply] |

**B. Facts of the complaint**

3. The complainants have made the following submissions in the complaint:
- i. That complainants had vide booking application dated 10.09.2011 applied for booking of a residential unit in the project in the project 'emerald floors premier-iii' being marketed and proposed to be developed by the respondent on land admeasuring 25.49 acres (10.32 hectares) located at sector-65, Gurugram, Haryana.
  - ii. That the respondent vide provisional allotment letter dated 20.09.2011 had provisionally allotted residential unit bearing no. EFP-III-53-0301 on 3rd floor in Building No. 53 having 183.48 sq. mtr. of super built-up area (136.54 sq. mtr. of carpet area) for a total basic price consideration of **Rs. 1,17,29,544.79/-**, & dedicated covered car parking at a consideration of Rs 25,00,000/- and club membership at Rs 75,000/- in favor of the complainants. The respondent further stated that apartment buyer's agreement will be forwarded shortly.
  - iii. That thereafter, the respondent presented an already printed apartment buyer's agreement to the complainants and the said agreement was executed between the complainants and the respondent on 05.03.2012 for a total consideration of **Rs. 1,25,87,794.79/-** that included basic sale price, exclusive usage of covered car park, external development charges (EDC),

infrastructure development charges (IDC), applicable preferential location charges (PLC), club membership charges.

- iv. That as per the terms of aforesaid agreement under clause 11(a), the respondent was required to handover the possession of the allotted unit within 24 months from the date of execution of the agreement i.e., 05.03.2012 with grace period of 3 months to apply and obtain the occupation certificate. However, the respondent failed to perform its obligation and handover possession within 24 months i.e., by 04.03.2014 after execution of buyer's agreement as the possession of the allotted unit was offered only on 18<sup>th</sup> December 2020 after a delay of 6 years 9 months 14 days.
- v. That despite payment of such huge amount by the complainants (loan or savings) towards the cost of the flat, the respondent had failed to perform part of its obligation as stated above. The project proposed to be developed by the respondent was inordinately delayed and the letter of offer of possession was made to the complainants only on **18.12.2020** after a delay of 6 years 9 months 14 days.
- vi. That the complainants had made the payment as per demand of the respondent before 08.01.2021 under objection to the inadequate delay compensation given by the respondent and also made payment of stamp duty on 25.01.2021 to complete the formalities of handover of possession. However, the complainants never waived their right to claim delay compensation and had also vide email dated **07.01.2021** raised the objection towards inadequacy of compensation while requesting for meeting with competent person on behalf of respondent to settle the issue. The respondent though stated to consider the request of the complainants vide email dated



**08.01.2021** but to the shock and dismay of the respondent never adhered to the request of the complainants.

- vii. That the complainants vide email dated **29.01.2021** to the respondent stated their desire to take over the possession of the allotted unit as soon as possible and also reiterated their objection to the inadequacy of compensation unilaterally decided by the complainants in prejudice to rights of the complainants to claim higher compensation as available under Rera provisions.
- viii. That however, the conveyance deed between the parties was executed on **30.06.2021** and the complete possession of the complainants along with title, right and interest was secured only on 30.06.2021 after a delay of 7 years 3 months 26 days. That further, the respondent did not proceed with construction in proportion to the payment made by the complainants and withheld the amount of the complainants. the allotted unit was nowhere near completion on due date of its completion and the respondent has failed to discharge his liability to pay delay compensation to the complainants.

**C. Relief sought by the complainants/allottees**

4. The complainants have filed the present compliant for seeking following relief:
- (i) Direct the respondents to give the delayed possession charges with prescribed interest per annum from the promissory date of delivery of the flat in question till handing over/actually delivery of the flat.
- (ii) The respondents shall not demand any money which is not part of builder buyer agreement.
5. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been

committed in relation to section 11(4)(a) of the Act and to plead guilty or not to plead guilty.

**D. Reply by the respondent/promoter**

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

- i. That at the very outset, it is submitted that the instant complaint is untenable both in facts and in law and is liable to be rejected on this ground alone. That the complainants are estopped by their acts, conduct, acquiescence, laches, omissions, etc, from filing the present complaint.
- ii. That the complainants have no locus standi or cause of action to file the present complaint. 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 05.03.2012, as shall be evident from the submissions made in the following parts of the present reply.
- iii. That the allottees herein, Mrs. Indira Rani and Mr. Mohit Goel being interested in the real estate development of the respondent, a group housing colony known as "Emerald Floors Premier" situated as Emerald Estate ("**Project**") tentatively applied for provisional allotment via booking application and were consequently allotted unit no. EFP-III 53-0301 on the 3<sup>rd</sup> floor in tower no. 53 having a super area of 1975 sq. ft. vide provisional allotment letter dated 20.09.2011 and consequently through the buyer's agreement dated 05.03.2012. That the relationship between the parties is contractual and is determined by the terms and conditions of the buyer's agreement executed between the parties. The respondent was adversely affected by various construction bans, lack of availability



of building material, regulation of the construction and development activities by the judicial authorities including NGT in NCR on account of the environmental conditions, restrictions on usage of groundwater by the high court of Punjab & Haryana, demonetization etc. and other force majeure circumstances, yet, the respondent completed the construction of the project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the complainants and demanding the prices only as and when the construction was being done.

- iv. That the project has got delayed on account of the following reasons which were/are beyond the power and control of the respondent and hence the respondent cannot be held responsible for the same:
- Firstly, 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 a height of 15 meters and above), irrespective of the area of each floor, are now required to have two staircases. It is expected that the construction of the second staircase will be completed in the first quarter of 2020. Thereafter, upon issuance of the occupation certificate and subject to force majeure conditions, possession of the apartment shall be offered to the complainants.
- Secondly**, the defaults on the part of the contractor.
- v. That thereafter, and only after obtaining the requisite permissions, the respondent legally offered the possession of the unit to the complainants on 18.12.2020. The complainants thereafter executed the indemnity cum undertaking for possession on 05.01.2021 and subsequently, the physical possession of the unit was taken on 08.04.2021. It needs to be categorically noted that the complainants have taken peaceful possession after having satisfied themselves





with the measurement, location, dimension, development, etc of the unit and the complainants had no claim of any nature whatsoever against the company about the size, dimension, area, location and legal status of the unit, as is evident in the unit handover letter dated 08.04.2021.

- vi. That thereafter, the absolute title over the unit was transferred to the complainants through conveyance deed dated 30.06.2021 that the complainants after having executed the conveyance deed for almost a year, taking peaceful possession of the unit, and having enjoyed such possession for a long period, should not be entitled to claim the interest on the delayed possession. thus, the present complaint is devoid of any cause of action and is nothing but an abuse process of law. it is submitted that a contract is deemed to be concluded after execution of the conveyance deed and hence the present complaint is liable to be dismissed with heavy costs conveyance deed dated 30.06.2021
- vii. That having enjoyed the possession of the unit for over a year and have absolute title, and raising no protests, whatsoever, the complainants should not be allowed to raise any claims now. that even though the act does not prescribe a limitation period for approaching the hon. authority, an allottee cannot be allowed to blanketly approach the hon. authority. In this regard, it is pertinent to highlight that **MahaRERA in Manasi Narasimhan and Ors. Vs. Larsen & Toubro Limited MANU/RR/0095/2021 Decided On: 18.08.2021** observed the following:

9. [...]

A right to seek redressal of grievance without any limitation would defy all commercial and legal logic. Every relief and every commercial transaction have to be clearly defined by boundaries

*set by time. In case there are no limitations, it would mean that no project would ever reach a closure even on issues that are clearly defined and known. A delay in the delivery of a project is a known and visible event to all at the time of delivery (in this case the date of possession). This is not an unforeseen event that unfolds itself in the unforeseeable future leading to a grievance which would require a relief. Thus, while section 18 does not spell out a limitation period, the section has an inbuilt limitation as it does not provide for raising and addressing grievances which are known today, in the future. Hence, this Authority is constrained to rule that any grievance of delayed possession must be raised either before or on date of possession and not on any future date chosen by the Purchaser (Allottee). Any grievance raised later on account of delayed possession would clearly be estopped by section 18. If this section was not self-limiting no real estate project or commercial deal would ever see a financial closure. If known defaults can be used to seek compensation at any time in the future it would mean that the Developer (Promoter) would never be able to assess the true cost of the said Project making real estate ventures extremely risky. The spirit of this enactment is to bring finality and settlement in a time bound manner. In this complaint the possession was taken on 04.03.2019 while the complaint was filed on 11.12.2019 i.e., almost 9 months later. At the time of possession, the fact of delay was known to both the Parties, but the Complainants choose not to raise it then. Thus, a grievance that was waived and/or acquiesced by the Complainants at the time of possession cannot be raised later just to reap some benefits.*

it is vehemently and emphatically submitted that after having executed the conveyance deed, the contractual relationship between the parties comes to an end. That having accepted the possession and the title of the unit, the complainants should not be allowed to take advantage of the law. that the present complaint is a frivolous attempt of the complainants to extract monies out of the respondent. That there exists no cause of action for the complainants to file the present complaint. That the respondent has made good on all parts of his responsibilities and obligations under the agreement and under the law, rules, and regulations. That for the reason of non-





existence of an existing cause of action, this complaint is liable to be dismissed on this ground alone.

- viii.** That as per clause 13(c) of the buyer's agreement delay compensation shall only be given to allottees who has not defaulted and/or breached any of the terms of this agreement or who have not defaulted in payment of instalments as per the schedule of the payment incorporated in the agreement. that even though the complainants have defaulted in payment of instalments, the respondent has credited compensation amounting to rs. 6,86,326 /- on\_18.12.2020. To the complainants, as per the terms and conditions of the buyer's agreement. further, an amount of Rs 1,59,457 was credited towards anti-profiting and Rs. 2,892 towards early payment rebate. this shows the goodwill and *bonafide* intention of the respondent. Without prejudice to the rights of the respondent, delayed interest if any has to calculated only on the amounts deposited by the allottees/complainants towards the basic principle amount of the unit in question and not on any **amount credited by** the respondent, or any payment made by the allottees/complainants towards delayed payment charges (dpc) or any taxes/statutory payments etc.
- ix.** It may also be submitted that without prejudice, after the enforcement of the act, each developer was required to register its project if the same was an "*ongoing project*" and give the date of completion of the said ongoing project in terms of section 4(2)(l)(c) of the act. Accordingly, the respondent had duly registered the said project, in which the said unit in question is situated having registration no. 104 of 2017 dated 24.8.2017.

- x. That the registration of the project is valid till 23.8.2022 and the respondent has already offered possession of the unit in question within the period of registration and therefore no cause of action can be construed to have arisen in favour of the complainants to file a complaint for seeking any interest as alleged more so when compensation payable under the buyer's agreement has already been credited to the complainants by the respondent.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.
- 8. Jurisdiction of the authority**
- E. The preliminary objections raised by the respondent regarding jurisdiction of the authority to entertain the present complaint stands rejected. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.
- E.I Territorial jurisdiction**
9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.
- E.II Subject-matter jurisdiction**
10. 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 complainant at a later stage.

**F. Findings on the objections raised by the respondent**

**F.I Objection regarding handing over possession as per declaration given under section 4(2)(I)(C) of RERA Act**

11. The counsel for the respondent submitted that the registration of the project is valid till 23.08.2022 and the respondent has already offered possession of the subject unit in question within the period of registration and therefore no cause of action can be construed to have arisen in favour of the complainants to file a complaint for seeking any interest as alleged. Therefore, next question of determination is whether the respondent is entitled to avail the time given to him by the authority at the time of registering the project under section 3 & 4 of the Act.
12. It is now settled law that the provisions of the Act and the rules are also applicable to ongoing project and the term ongoing project has been defined in rule 2(1)(o) of the rules of 2017. The new as well as the ongoing project are required to be registered under section 3 and section 4 of the Act.
13. Section 4(2)(I)(C) of the Act requires that while applying for registration of the real estate project, the promoter has to file a declaration under section 4(2)(I)(C) of the Act and the same is reproduced as under: -

*"Section 4: - Application for registration of real estate projects*

*(2)The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely: —.....*

*(I): -a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating: —*

.....

*(C) the time period within which he undertakes to complete the project or phase thereof, as the case may be...."*

14. The authority observes that the time period for handing over the possession is committed by the builder as per the relevant clause of buyer's agreement and the commitment of the promoter regarding handing over of possession of the unit is taken accordingly. The new timeline indicated in respect of ongoing project by the promoter while making an application for registration of the project does not change the commitment of the promoter to hand over the possession by the due date as per the buyer's agreement. The new timeline as indicated by the promoter in the declaration under section 4(2)(1)(C) is now the new timeline as indicated by him for the completion of the project. Although, penal proceedings shall not be initiated against the builder for not meeting the committed due date of possession but now, if the promoter fails to complete the project in declared timeline, then he is liable for penal proceedings. The due date of possession as per the agreement remains unchanged and promoter is liable for the consequences and obligations arising out of failure in handing over possession by the due date as committed by him in the apartment buyer agreement and he is liable for the delayed possession charges as provided in proviso to section 18(1) of the Act. The same issue has been dealt by hon'ble



Bombay High Court in case titled as ***Neelkamal Realtors Suburban Pvt. Ltd. and anr. vs Union of India and ors.*** and has observed 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..."*

**F.II Whether signing of unit hand over letter or indemnity-cum-undertaking at the time of possession extinguishes the right of the allottee to claim delay possession charges.**

15. The respondent contended that at the time of taking possession of the subject unit vide dated 08.04.2021 the complainants had certified themselves to be fully satisfied with regard to the measurements, location, direction, developments et cetera of the unit and also admitted and acknowledge that they do not have any claim of any nature whatsoever against the respondent and that upon acceptance of possession, the liabilities and obligations of the respondent as enumerated in the allotment letter/buyer's agreement, stand fully satisfied. The relevant para of the unit handover letter relied upon reads as under:

*"The Allottee, hereby, certifies that he / she has taken over the peaceful and vacant physical possession of the aforesaid Unit after fully satisfying himself / herself with regard to its measurements, location, dimension and development etc. and hereafter the Allottee has no claim of any nature whatsoever against the Company with regard to the size, dimension, area, location and legal status of the aforesaid Home.*

*Upon acceptance of possession, the liabilities and obligations of the Company as enumerated in the allotment letter/Agreement executed in favour of the Allottee stand satisfied."*

16. At times, the allottee is asked to give the indemnity-cum-undertaking before taking possession. The complainants have waited long for their cherished dream home and now when it is ready for possession, they either have to sign the indemnity-cum-undertaking and take possession or to keep struggling with the promoter if indemnity-cum-undertaking is not signed by them. Such an undertaking/ indemnity bond given by a person thereby giving up their valuable rights must be shown to have been executed in a free atmosphere and should not give rise to any suspicion. If a slightest of doubt arises in the mind of the adjudicator that such an agreement was not executed in an atmosphere free of doubts and suspicions, the same would be deemed to be against public policy and would also amount to unfair trade practices. No reliance can be placed on any such indemnity-cum-undertaking and the same is liable to be discarded and ignored in its totality. Therefore, this authority does not place reliance on such indemnity-cum-undertaking. To fortify this view, the authority place reliance on the NCDRC order dated 03.01.2020 in case titled as **Capital Greens Flat Buyer Association and Ors. Vs. DLF Universal Ltd., Consumer case no. 351 of 2015**, wherein it was held that the execution of indemnity-cum-undertaking would defeat the provisions of sections 23 and 28 of the Indian Contract Act, 1872 and therefore would be against public policy, besides being an unfair trade practice. The relevant portion of the said judgment is reproduced herein below.

*"Indemnity-cum-undertaking*



30. *The developer, while offering possession of the allotted flats insisted upon execution of the indemnity-cum-undertaking before it would give possession of the allotted flats to the concerned allottee.*

*Clause 13 of the said indemnity-cum-undertaking required the allottee to confirm and acknowledge that by accepting the offer of possession, he would have no further demands/claims against the company of any nature, whatsoever. It is an admitted position that the execution of the undertaking in the format prescribed by the developer was a pre-requisite condition, for the delivery of the possession. The opposite party, in my opinion, could not have insisted upon clause 13 of the Indemnity-cum-undertaking. The obvious purpose behind such an undertaking was to deter the allottee from making any claim against the developer, including the claim on account of the delay in delivery of possession and the claim on account of any latent defect which the allottee may find in the apartment. The execution of such an undertaking would defeat the provisions of Section 23 and 28 of the Indian Contract Act, 1872 and therefore would be against public policy, besides being an unfair trade practice. Any delay solely on account of the allottee not executing such an undertaking would be attributable to the developer and would entitle the allottee to compensation for the period the possession is delayed solely on account of his having not executed the said undertaking-cum-indemnity."*

17. The said judgment of NCDRC was also upheld by the Hon'ble Supreme Court vide its judgement dated 14.12.2020 passed in civil appeal nos. 3864-3889 of 2020 against the order of NCDRC.
18. It is noteworthy that section 18 of the Act stipulates for the statutory right of the allottee against the obligation of the promoter to deliver the possession within stipulated timeframe. Therefore, the liability of the promoter continues even after the execution of indemnity-cum-undertaking at the time of possession. Further, the reliance placed by the respondent counsel on the language of the handover letter that the allottees had waived off their right by signing the said unit handover letter is superficial. In this context, it is appropriate to refer case titled as **Mr. Beatty Tony Vs. Prestige Estate Projects Pvt, Ltd. (Revision petition no.3135 of 2014 dated 18.11.2014)**, wherein the Hon'ble

NCDRC while rejecting the arguments of the promoter that the possession has since been accepted without protest vide letter dated 23.12.2011 and builder stands discharged of its liabilities under agreement, the allottee cannot be allowed to claim interest at a later date on account of delay in handing over of the possession of the apartment to him, held as under:

*"The learned counsel for the opposite parties submits that the complainant accepted possession of the apartment on 23/24.12.2011 without any protest and therefore cannot be permitted to claim interest at a later date on account of the alleged delay in handing over the possession of the apartment to him. We, however, find no merit in the contention. A perusal of the letter dated 23.12.2011, issued by the opposite parties to the complainant would show that the opposite parties unilaterally stated in the said letter that they had discharged all their obligations under the agreement. Even if we assume on the basis of the said printed statement that having accepted possession, the complainant cannot claim that the opposite parties had not discharged all their obligations under the agreement, the said discharge in our opinion would not extend to payment of interest for the delay period, though it would cover handing over of possession of the apartment in terms of the agreement between the parties. In fact, the case of the complainant, as articulated by his counsel is that the complainant had no option but to accept the possession on the terms contained in the letter dated 23.12.2011, since any protest by him or refusal to accept possession would have further delayed the receiving of the possession despite payment having been already made to the opposite parties except to the extent of Rs. 8,86,736/-. Therefore, in our view the aforesaid letter dated 23.12.2011 does not preclude the complainant from exercising his right to claim compensation for the deficiency on the part of the opposite parties in rendering services to him by delaying possession of the apartment, without any justification condonable under the agreement between the parties."*

19. The said view was later reaffirmed by the Hon'ble NCDRC in case titled as **Vivek Maheshwari Vs. Emaar MGF Land Ltd. (Consumer case no. 1039 of 2016 dated 26.04.2019)** wherein it was observed as under:

*"7. It would thus be seen that the complainants while taking possession in terms of the above referred printed handover letter of the OP, can, at best, be said to have discharged the OP of its liabilities and obligations as enumerated in the agreement. However, this hand over letter, in my opinion, does not come in the way of the complainants seeking*



*compensation from this Commission under section 14(1)(d) of the Consumer Protection Act for the delay in delivery of possession. The said delay amounting to a deficiency in the services offered by the OP to the complainants. The right to seek compensation for the deficiency in the service was never given up by the complainants. Moreover, the Consumer Complaint was also pending before this Commission at the time the unit was handed over to the complainants. Therefore, the complainants, in my view, cannot be said to have relinquished their legal right to claim compensation from the OP merely because the basis of the unit has been taken by them in terms of printed hand over letter and the Sale Deed has also been got executed by them in their favour."*

20. Therefore, the authority is of the view that the aforesaid unit handover letter dated 08.04.2021 does not preclude the complainants from exercising their right to claim delay possession charges as per the provisions of the Act.

**F.III Whether the execution of the conveyance deed extinguishes the right of the allottee to claim delay possession charges**

21. The respondent submitted that the complainants have executed the conveyance deed on 30.06.2021 and therefore, the transaction between the complainants and the respondent have been concluded and no right or liability can be asserted by respondent or the complainants against the other. Therefore, the complainants are estopped from claiming any interest in the facts and circumstances of the case. The present complaint is nothing but a gross misuse of process of law.
22. It is important to look at the definition of the term 'deed' itself in order to understand the extent of the relationship between an allottee and promoter. A deed is a written document or an instrument that is sealed, signed and delivered by all the parties to the contract (buyer and seller). It is a contractual document that includes legally valid terms and is enforceable in a court of law. It is mandatory that a deed should be in

writing, and both the parties involved must sign the document. Thus, a conveyance deed is essentially one wherein the seller transfers all rights to legally own, keep and enjoy a particular asset, immovable or movable. In this case, the asset under consideration is immovable property. On signing a conveyance deed, the original owner transfers all legal rights over the property in question to the buyer, against a valid consideration (usually monetary). Therefore, a 'conveyance deed' or 'sale deed' implies that the seller signs a document stating that all authority and ownership of the property in question has been transferred to the buyer.

23. From the above, it is clear that on execution of a sale/ conveyance deed, only the title and interests in the said immovable property (herein the allotted unit) is transferred. However, the conveyance deed does not mark an end to the liabilities of a promoter since various sections of the Act provide for continuing liability and obligations of a promoter who may not under the garb of such contentions be able to avoid its responsibility. The relevant sections are reproduced hereunder:

**"11. Functions and duties of promoter**

(1) XXX

(2) XXX

(3) XXX

(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.*



*Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.*

- (b) XXX
- (c) XXX
- (d) *be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees:* (emphasis supplied)

**"14. Adherence to sanctioned plans and project specifications by the promoter-**

- (1) XXX
- (2) XXX
- (3) *In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.....* (emphasis supplied)

24. This view is affirmed by the Hon'ble NCDRC in case titled as **Vivek Maheshwari Vs. Emaar MGF Land Ltd. (Consumer case no. 1039 of 2016 dated 26.04.2019)** wherein it was observed as under:

- "7. *It would thus be seen that the complainants while taking possession in terms of the above referred printed handover letter of the OP, can, at best, be said to have discharged the OP of its liabilities and obligations as enumerated in the agreement. However, this hand over letter, in my opinion, does not come in the way of the complainants seeking compensation from this Commission under section 14(1)(d) of the Consumer Protection Act for the delay in delivery of possession. The said delay amounting to a deficiency in the services offered by the OP to the complainants. The right to seek compensation for the deficiency in the service was never given up by the complainants. Moreover, the Consumer Complaint was also pending before this Commission at the time the unit was handed over to the complainants. Therefore, the complainants, in my view, cannot be said to have relinquished their*

legal right to claim compensation from the OP merely because the basis of the unit has been taken by them in terms of printed hand over letter and the Sale Deed has also been got executed by them in their favour.

8. .....The relationship of consumer and service provider does not come to an end on execution of the Sale Deed in favour of the complainants....." (emphasis supplied)

25. From above, it can be said that taking over the possession and thereafter execution of the conveyance deed can best be termed as respondent having discharged its liabilities as per the buyer's agreement and upon taking possession, and/or executing conveyance deed, the complainants never gave up their statutory right to seek delayed possession charges as per the provisions of the said Act. Also, the same view has been upheld by the Hon'ble Supreme Court in case titled as **Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd. (now Known as BEGUR OMR Homes Pvt. Ltd.) and Ors. (Civil appeal no. 6239 of 2019) dated 24.08.2020**, the relevant paras are reproduced herein below:

"34 The developer has not disputed these communications. Though these are four communications issued by the developer, the appellants submitted that they are not isolated aberrations but fit into a pattern. The developer does not state that it was willing to offer the flat purchasers possession of their flats and the right to execute conveyance of the flats while reserving their claim for compensation for delay. On the contrary, the tenor of the communications indicates that while executing the Deeds of Conveyance, the flat buyers were informed that no form of protest or reservation would be acceptable. The flat buyers were essentially presented with an unfair choice of either retaining their right to pursue their claims (in which event they would not get possession or title in the meantime) or to forsake the claims in order to perfect their title to the flats for which they had paid valuable consideration. In this backdrop, the simple question which we need to address is whether a flat buyer who seeks to espouse a claim against the developer for delayed possession can as a consequence of doing so be compelled to defer the right to obtain a conveyance to perfect their title. It would, in our view, be manifestly unreasonable to expect that in



*order to pursue a claim for compensation for delayed handing over of possession, the purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance to forsake the right to claim compensation. This basically is a position which the NCDRC has espoused. We cannot countenance that view.*

35. *The flat purchasers invested hard earned money. It is only reasonable to presume that the next logical step is for the purchaser to perfect the title to the premises which have been allotted under the terms of the ABA. But the submission of the developer is that the purchaser forsakes the remedy before the consumer forum by seeking a Deed of Conveyance. To accept such a construction would lead to an absurd consequence of requiring the purchaser either to abandon a just claim as a condition for obtaining the conveyance or to indefinitely delay the execution of the Deed of Conveyance pending protracted consumer litigation."*
26. It is observed that all the agreements/ documents signed by the allottee reveals stark incongruities between the remedies available to both the parties. In most of the cases, these documents and contracts are ex-facie one sided, unfair and unreasonable whether the plea has been taken by the allottee while filing its complaint that the documents were signed under duress or not. The right of the allottee to claim delayed possession charges shall not be abrogated simply for the said reason.
27. The allottees have invested their hard-earned money which there is no doubt that the promoter has been enjoying benefits of and the next step is to get their title perfected by executing a conveyance deed which is the statutory right of the allottee. Also, the obligation of the developer – promoter does not end with the execution of a conveyance deed. The essence and purpose of the Act was to curb the menace created by the developer/promoter and safeguard the interests of the allottees by protecting them from being exploited by the dominant position of the

developer which he thrusts on the innocent allottees. Therefore, in furtherance to the Hon'ble Apex Court judgement and the law laid down in the **Wg. Cdr. Arifur Rahman (supra)**, this authority holds that even after execution of the conveyance deed, the complainants cannot be precluded from their right to seek delay possession charges from the respondent-promoter.

**G. Findings on the reliefs sought by the complainant**

**G.I Direct the respondent to pay give delayed possession charges along with prescribed rate of interest.**

28. In the present complaint, the complainants intend to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

***"Section 18: - Return of amount and compensation***

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*

.....

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

29. 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 **24 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 completion certificate/occupation certificate in respect of the Unit and/or the Project.*

30. 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 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.
31. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 24 from the date of execution of this Agreement and further provided in agreement that promoter shall be entitled to a grace period of 3 for applying and obtaining the occupation certificate in respect of the unit and/or the Project. The date of execution of buyer's agreement is 05.03.2012. The period of 24 months expired on 05.03.2014. As a matter of fact, the promoter has not applied to the

concerned authority for obtaining completion certificate/occupation certificate within the grace period 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.

32. **Admissibility of delay possession charges at prescribed rate of interest:** 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.

33. 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.
34. 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., 31.05.2022 is 7.40%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.40%.
35. 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;"*

36. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 9.40% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.
37. Considering the above-mentioned facts, the authority calculated due date of possession according to clause 11(a) of the buyer's agreement dated 05.03.2012 i.e., 24 months from the date of execution and disallows the grace period of 3 months as the promoter has not applied to the concerned authority for obtaining completion certificate/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. Therefore, the authority allows DPC **w.e.f. 05.03.2014 till 18.02.2021** i.e., expiry of 2 months from the date of offer of possession (**18.12.2020**).

The complainants are directed to pay outstanding dues, if any, after adjustment of delay possession charges/interest for the period the possession is delayed. 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., 9.40% by the respondents/promoters which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delay possession charges as per section 2(za) of the Act. The amount of compensation already paid to the complainants by the respondent as delay compensation as per the buyer's agreement shall be adjusted towards delay possession charges payable by the promoter at the prescribed rate of interest (DPC) to be paid by the respondent as per the proviso to section 18(1) of the Act.

38. 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 11.11.2020. However, the respondent offered the possession of the unit in question to the complainants only on 18.12.2020. 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, the complainants 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 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.
39. 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 @ 9.40 % p.a. w.e.f. **05.03.2014**



till **18.02.2021** i.e., expiry of 2 months from the date of offer of possession (18.12.2020).

**H. Directions of the authority**

40. 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., 9.40 % per annum for every month of delay on the amount paid by the complainants from **05.03.2014 till 18.02.2021** i.e., expiry of 2 months from the date of offer of possession (18.12.2020). 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. The complainants are directed to pay outstanding dues, if any, after adjustment of delay possession charges/interest for the period the possession is delayed. 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., 9.40% by the respondents/promoters which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delay possession charges as per section 2(za) of the Act. The amount of compensation already paid to the complainants by the respondent as delay compensation as per the buyer's agreement shall be adjusted towards delay possession charges payable by the promoter at the prescribed rate of interest (DPC) to be paid by the respondent as per the proviso to section 18(1) of the Act.

iii. 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.

41. Complaint stands disposed of.

42. File be consigned to registry.

*V.K. - 3*  
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

*[Signature]*  
(Dr. K.K. Khandelwal)

Chairman

Dated: 31.05.2022

**HARERA**  
**GURUGRAM**