

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

Complaint no : 4491 of 2021
Date of decision : 31.05.2022

1. Mr. Suresh Rawat
 2. Mrs. Balvinder Kaur Rawat
- Address:-** EFP-11-002, Emerald Floor Premiere,
Sector-65, Gurugram

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 Rahul Thareja
Shri Dhruv Rohatgi

Advocate for the complainants
Advocates for the respondent

ORDER

1. The present complaint dated 22.11.2021 has been filed by the complainants/allottees in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter se them.

A. Project and unit related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

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	Registered vide no. 104 of 2017 dated 24.08.2018 [For 82768 sq. mtrs.]
	Validity of registration	23.08.2022
6.	Provisional allotment letter dated	02.11.2009 [annexure R3, page 50 of reply]
7.	Unit no.	EFP-11-0002, ground floor (1650 sq.ft.) [page 68 of complaint]
8.	Date of execution of buyer's agreement	14.01.2010 [annexure C2, page 64 of complaint]
9.	Possession clause	11. POSSESSION (a) Time of handing over the Possession

		<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 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 <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>.</i></p> <p>(Emphasis supplied) [page 81 of complaint]</p>
10.	Due date of possession	<p>14.01.2013</p> <p>[Note: Grace period is not included]</p>
11.	Total consideration as per statement of account dated 09.12.2021 at page 139 of reply	Rs. 87,61,726/-
12.	Total amount paid by the complainants as per statement of account dated 09.12.2021 at page 140 of reply	Rs.88,71,624/-
13.	Occupation certificate	<p>05.03.2019</p> <p>[annexure R6, page 129 of reply]</p>
14.	Offer of possession	<p>17.01.2020</p> <p>[annexure R2, page 131 of reply]</p>

15.	Delay compensation already paid by the respondent in terms of the buyer's agreement as per statement of account dated 09.12.2021 at page 140 of reply	Rs. 6,44,992/-
16.	Unit handover letter dated	09.03.2020 [annexure R9, page 142 of reply]

B. Facts of the complaint

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

- i. That the That the present complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the respondent in the sale of their floors and the provisions allied to it. The modus operandi adopted by the respondent, from the respondent point of view may be unique and innovative but from the consumer's point of view, the strategies used to achieve its objective invariably bears the irrefutable stamp of impunity and total lack of accountability and transparency, as well as breach of contract and duping of the consumers, be it either through not implementing the services/utilities as promised in the brochure or through not delivering the project in time. The respondent not only failed to adhere to the terms and conditions of buyer's agreement dated 14.01.2010 but also illegally extracted money from the complainants by stating false promises and statements.
- ii. The grievance of the complainants relates to breach of contract, false promises, gross unfair trade practices and deficiencies in the services committed by the respondent M/s

- Emaar MGF land ltd. concerning the flat offered to her, including few demands which are not as per the builder buyer agreement and hence are unjustified and illegal.
- iii. There is no second thought to the fact that the complainants have paid more than **100%** of the total payment of Rs. **85,91,624.00** as per details attached with the offer of possession. As per clause 11 (a) of the buyer's agreements, which was signed on 14th January 2010 details of which are attached, the possession of the said unit was supposed to be delivered within (36) months from the execution of the BBA plus a grace period of three months i.e. by 14th April 2013. It would be appreciated that the offer of possession of the flat has been made after a delay of more than seven years.
 - iv. That the obvious purpose behind such an undertaking is to deter the allottee from making any claim on account of any latent defect which the allottee may find in the unit being bought by the complainants. the execution of such an undertaking would defeat the provisions of **sections 23 and 28** of the indian contract act. it has been decided by **justice v k jain, presiding officer in consumer case no. 351 of 2015, associations / buyers versus DLF universal limited.**
 - v. That the clauses in the Indemnity Bond are purely conditional and absolutely unfair. The complainants, therefore, refuse to sign such an indemnity bond which is purely one-sided and is with the sole intention of taking all the rights away of the complainants.

- vi. That deposit of Rs. 72,992.00/- for the estimated HVAT liability before the execution of conveyance deed as per offer of possession letter which is illegal and unjustified. These are paid monthly once the expenses have been incurred and billed to the owner of the unit and therefore demanding an unspecified amount as a deposit of annual common area maintenance charges along with the final payment is unjustified and illegal.
- vii. That the Respondent has raised a Demand for Annual maintenance charges which were executed in advance from the Complainants. The maintenance has to be charged on an incurred basis and not in anticipation. This makes the act by the respondent illegal and amounts to unjust enrichment. Thus, depriving the allottees of their rightful interest and hence for the above-stated reason as well, the Offer of Possession is not a valid offer of possession. These charges need to be removed from the statement of account attached and returned to the complainants.
- viii. Unfair and unjust demands of funds made apart from the above, the following charges levied by the Respondent in their Offer of Possession dated 17.01.2010 are not a part of the BBA and hence are not payable if at all, as per the judgment of the Hon'ble Supreme Court in the matter of **Wg. CDR. Arifur Khan & anr.V. DLF Southern homes Pvt. Ltd C.A no: 6239 of 2019**. It was observed by the Hon'ble Supreme Court that all such expenditures can only charge based on the actual expenditure incurred and not on a prorated basis.

- ix. The major demands requested to be removed in the above referred letter were:
- Electrification charge of Rs. 1,05,372/-
 - Administrative Charges Rs. 14,160/-
 - Miscellaneous expenditure for registration charges- Rs. 2,50,000/-
 - Sewerage Connection Charges- Rs. 934/-
- x. Holding charges with necessary statutory taxes, as per the agreed terms and conditions of the application form and buyers' agreement shall be applicable in case of failure to take possession. That since the offer of possession issued by the respondent on the 17th of January 2020 to the complainants cannot be considered a valid offer of possession as stipulated by the Hon'ble NCRDC in the matter of **Vision India realtors Pvt. Ltd & Anr. Vs. Sanjeev Malhotra First Appeal No 855 of 2018** wherein the Hon'ble court held that:
- "Offering possession on the payment of charges which the Complainant is not a flat buyer is not contractually bound to pay, cannot be considered a valid offer of possession. Moreover, no offer of possession has been made...which was in the nature of a final demand notice informing the Complainant"*
- In conjunction with view taken by the Hon'ble NCDRC in the above noted matter the question of holding charges does not arise, as since the offer of possession is not a valid offer of possession, hence the holding charges would not apply.
- xi. The offer of possession is not a valid offer of possession as the company shall not charge any amount from the allottee which is not a part of the flat buyer's agreement whereas the company has charged.

C. Relief sought by the complainants/allottees

4. The complainants have filed the present compliant for seeking following relief:

- i. Direct the respondent to pay the interest at the prevalent rate as per the Act and the Rules p.a. to the complainants on the entire amount paid by them towards the delay possession charges w.e.f. the committed date of possession till the time the actual possession is delivered after obtaining the occupation certificate for the entire unit including servant quarters and a valid offer of possession made without adding any condition which do not form part of BBA.
- ii. It is most respectfully prayed that this authority be pleased to order the respondent to remit the charges the HVAT, Advance maintenance, GST, IFMS, as the same is not legally bound to pay the same.

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 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 14.01.2010 as shall be evident from the submissions made in the following parts of the present reply.

- ii. That the present complaint is not maintainable in law or on facts. The provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the 'Act') are not applicable to the project in question. The application for issuance of occupation certificate in respect of the tower in which the apartment in question is located was made on 29.06.2017, i.e. before the notification of the Haryana Real Estate Regulation and Development Rules 2017 (hereinafter referred to as the 'Rules'). The occupation certificate has been thereafter issued on 05.03.2019.
- iii. That part of the project in which the unit in question is situated is not an 'Ongoing Project' under Rule 2(1)(o) of the Rules. The same does not require registration and consequently has not been registered under the provisions of the Act. This 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.
- iv. That the buyer's agreement dated 14.01.2010 ("agreement") was executed between the complainants and the respondent. It is pertinent to mention that the buyer's agreement was consciously and voluntarily executed between the parties. However, the complainants were irregular in payment of instalments which is why the respondent was constrained to issue reminders and letters to the complainant requesting them to make payment of demanded amounts. Payment request letters, reminders etc. The payments request letter and reminders thereof were sent to the complainants by the respondent clearly mentioning the outstanding amount and

the due date for remittance of the respective amounts as per the schedule of payments, requesting them to timely discharge their outstanding financial liability but to no avail.

- v. That the respondent applied for the grant of occupation certificate on 29.06.2017, which was received on 05.03.2019. Thereafter, the respondent offered possession of the said unit to the complainants vide offer of possession letter dated 17.01.2020 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 said unit. It may be submitted that the complainants have already been given compensation of Rs 6,44,992 /- towards the delayed possession. The complainants have further been given benefit of Rs. 8,106/- towards EPR Rs. 16,455/- towards anti profiting etc., yet the complainants are not coming forward to get the conveyance deed executed of their unit solely with malafide intent to extort more and more money from the respondent. without prejudice to the rights of the respondent, delayed interest if any has to be calculated only on the amounts deposited by the allottees/complainants towards the basic 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.
- v. That the respondent has already offered possession of the unit in question 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 (hereinafter referred to as "agreement") has already been credited to the complainants by the respondent. it is further relevant to submit that the complainants have already taken the possession of the unit in question vide unit handover letter dated 09.03.2020. the servant quarter has been handed over vide servant quarter handover letter dated 18.08.2021.

- vi. That the complainants are needlessly avoiding the conclusion of the transaction with the intent of evading the consequences as enumerated in the buyer's agreement for delay in obtaining of possession on the part of the respective allottee. Therefore, there is no equity in favour of the complainants. the complainants never had any intention of purchasing the unit in question for their own use. the complainants are not an "aggrieved person" under the act but an investor who has purchased the said unit in question as an investment to be further sold in order to earn profit.
- vii. That the complaint is also liable to be dismissed for the reason that for the unit in question, the buyer's agreement was executed on 14.01.2010 i.e., prior to coming into effect of the act and the rules. as such, the terms and conditions of the agreement executed prior to the applicability of the act and the rules, would prevail and shall be binding between the parties. in view thereof, the authority has no jurisdiction to entertain the present complaint as the complainants has no cause of action to file the present complaint under the act/rules.
- viii. The said agreement was followed by an indemnity cum undertaking dated 10.02.2020, duly executed by the complainants at the time of

taking the possession of the unit in question, whereby, the complainants had undertaken to comply with the terms of the buyer's agreement and further to pay HVAT demand as and when the same becomes due and payable, maintenance charges to the concerned agency and to come forward for the execution of the conveyance deed in their favour. Therefore, they are now barred by estoppel in raising any grievance qua the same. It does not now lie in the mouth of the complainants to allege default on part of the respondent.

- ix. That an amount of Rs. 5,55,209/- is due and payable by the complainants. The complainants have intentionally refrained from remitting the aforesaid amount to the respondent. That the complainants have consciously defaulted in his obligations as enumerated in the buyer's agreement as well as under the act. The complainants cannot be permitted to take advantage of his own wrongs. That an offer for possession marks termination of the period of delay, if any. The complainants are not entitled to contend that the alleged period of delay continued even after receipt of offer for possession. The complainants have consciously and maliciously refrained from obtaining possession of the unit in question.
- x. 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.

- xi. That it is further submitted that despite there being a number of defaulters in the project, the respondent itself infused into the project and has diligently developed the project in question. the respondent had applied for occupation certificate on 29.06.2017. Occupation certificate was thereafter issued in favour of the respondent vide memo bearing no. zp-441/sd(dk)/2019/5982 dated 05.03.2019. It is pertinent to note that once an application for grant of occupation certificate is submitted for approval in the office of the concerned statutory authority, the respondent ceases to have any control over the same. The grant of sanction of the occupation certificate is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence. as far as the respondent is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authority for obtaining of the occupation certificate. No fault or lapse can be attributed to the respondent in the facts and circumstances of the case. therefore, the time period utilised by the statutory authority to grant occupation certificate to the respondent is necessarily required to be excluded from computation of the time period utilised for implementation and development of the project.
- xii. That it is submitted that the respondent has acted strictly in accordance with the terms and conditions of the agreement

between the parties. there is no default or lapse on the part of the respondent. The allegations made in the complaint inter-alia that the respondent has failed to comply with the obligations under the agreement. On the contrary, it is the complainants who are in clear breach of the terms of the agreement by not making timely payments.

- xiii. That the complainants have no locus standi or cause of action to file the present complaint. The bare perusal of the complaint will make it evident that the complainants has miserably failed to make a case against the respondent of contravention of any provision of the act or any of the rules made thereunder. It is submitted that the complainants have merely alleged in their complaint about delay on part of the respondent in handing over of possession but have failed to substantiate the same.
- xiv. That the complainants have purchased the unit, in question as a speculative investment. the complainants never intended to reside in the said unit and have admittedly booked the same with a view to earn a huge profit from resale of the same. Thus, the complainants are not bona fide "allottees" under the act and the rules but are "investors".
- xv. Without prejudice to the aforesaid preliminary objections and the contention of the respondent that unless the question of maintainability is first decided, the respondent ought not to be called upon to file the reply on merits to the complaint, this reply is being filed by way of abundant caution, with liberty to file such further reply as may be necessary, in case the complaint is held to be maintainable.

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.

G. Findings on the reliefs sought by the complainants/allottees

i. Direct the respondent to pay the interest at the prevalent rate as per the act and the rules p.a. to the complainants on the entire amount paid by them towards the delay possession charges w.e.f. the

committed date of possession till the time the actual possession is delivered after obtaining the occupation certificate for the entire unit including servant quarters and a valid offer of possession made without adding any condition which do not form part of BBA.

- ii. it is most respectfully prayed that this authority be pleased to order the respondent to remit the charges the HVAT, advance maintenance, GST, IFMS as the same is not legally bound to pay the same.

11. 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."

12. 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 completion certificate/occupation certificate in respect of the Unit and/or the Project

13. 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.
14. **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 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 he project. The date of execution of buyer's agreement is 14.01.2010. the period of 36 months expired on 14.01.2013. 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.

15. **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.

16. 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.
17. 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%.

18. 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;"*

19. 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.
20. Considering the above-mentioned facts, the authority calculated due date of possession according to clause 11 of the buyer's agreement dated 14.01.2010 i.e., 36 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. 14.01.2013 till 17.03.2020** i.e., expiry of 2 months from the date of offer of possession (17.01.2020).

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.

G.II It is most respectfully prayed that this authority be pleased to order the respondent not to charge anything irrelevant which has not been agreed to between the parties as stated in the interim relief, which for the sake of brevity is not being repeated.

- **IFMS**

The authority has decided this issue in the complaint bearing no. *4031 of 2019* titled as *Varun Gupta V/s Emaar MGF Land Ltd.* wherein the authority has held that the respondent may be allowed to collect a reasonable amount from the allottees under the head "IFMS". However, the authority directs that the promoter must always keep the amount collected under this head in a separate bank account and shall maintain that account regularly in a very transparent manner. If any allottee of the project requires the promoter to give the details regarding the availability of IFMS amount and the interest accrued thereon, the promoter must provide details to the allottee. It is further clarified that out of this IFMS/IBMS, no amount can be spent by the promoter for the

expenditure it is liable to incur to discharge its liability and obligations as per the provisions of section 14 of the Act

- **HVAT**

The authority has decided this in the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.** wherein the authority has held that the promoter is entitled to charge VAT from the allottee for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT). However, the promoter cannot charge any VAT from the allottees/prospective buyers for the period 01.04.2014 to 30.06.2017 as the same was to be borne by the promoter-developer only. The respondent-promoter is bound to adjust the said amount, if charged from the allottee with the dues payable by him or refund the amount if no dues are payable by him. In the present complaint, the respondent has not charged any amount towards HVAT for the period of 01.04.2014 till 30.06.2017, however, vide letter of offer of possession dated 05.10.2016 has demanded lien marked FD of Rs. 34,759/- towards future liability of HVAT for liability post 01.04.2014 till 30.06.2017. In light of judgement stated above, the respondent shall not demand the same and the lien so marked be removed.

- **Advance Maintenance charges**

The authority has decided this issue in the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.** wherein the authority has held that the respondent is right in demanding advance maintenance charges at the rates' prescribed in the builder buyer's agreement at the time of offer of possession.

However, the respondent shall not demand the advance maintenance charges for more than one year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.

In the present complaint, the respondent has demanded Rs.69,300/- towards advance maintenance charges (@ Rs.3.5 per sq. ft. + GST @ 18%) for period of 12 months as per letter of offer of possession dated 17.01.2020.

Keeping in view the facts above, the authority deems fit that the respondent is right in demanding advance maintenance charges at the rate prescribed therein at the time of offer of possession in view of the judgement (supra). However, the respondent shall not demand the advance maintenance charges for more than one (1) year from the allottee. Therefore, the complainants are liable to pay the same.

- **GST**

The authority has decided this issue in the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.** wherein the authority has held that for the projects where the due date of possession was prior to 01.07.2017 (date of coming into force of GST), the respondent/promoter is not entitled to charge any amount towards GST from the complainant/allottee as the liability of that charge had not become due up to the due date of possession as per the buyer's agreements.

In the present complaint, the possession of the subject unit was required to be delivered by 14.01.2013 and the incidence of GST

came into operation thereafter on 01.07.2017. So, the complainants cannot be burdened to discharge a liability which had accrued solely due to respondents' own fault in delivering timely possession of the subject unit. So, the respondent/promoter is not entitled to charge GST from the complainants/allottees as the liability of GST had not become due up to the due date of possession as per the flat buyers agreement as has been held by **Haryana Real Estate Appellate Tribunal, Chandigarh in appeal bearing no. 21 of 2019 titled as M/s Pivotal Infrastructure Pvt. Ltd. Vs. Prakash Chand Arohi**. Also, the authority concurs on this issue and holds that the difference between Post-GST and Pre-GST shall be borne by the promoter. The promoter is entitled to charge from the allottee the applicable combined rate of VAT and service tax fixed by the government.

21. 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 05.03.2019. However, the respondent offered the possession of the unit in question to the complainants only on 17.01.2020. 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.

22. 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. **14.01.2013 till 17.03.2020** i.e., expiry of 2 months from the date of offer of possession (17.01.2020).

H. Directions of the authority

23. 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 **14.01.2013 till 17.03.2020** i.e., expiry of 2 months from the date of offer of possession (17.01.2020). 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.

- 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.

24. Complaint stands disposed of.

25. File be consigned to registry.

V.K.G.
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

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

Chairman

Dated: 31.05.2022

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