BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no: 4101 of 2021
Date of decision: 17.08.2022

Mr. Ved Prakash Sharma & Mrs. Sunita Sharma
Address: - HSE 163, Bouleard DU Lac, The Beverly Hills, 23 Sam Mum Tsai Road, Tai PO New Territories, Hongkong.

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 — **Chairman**
Shri Vijay Kumar Goyal — **Member**

APPEARANCE:
Shri Jagdeep Kumar — Advocate for the complainants
Shri Dhruv Rohatgi — Advocates for the respondent

ORDER

1. The present complaint dated 03.11.2021 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	The Enclave, Sector- 66
2.	Unit no.	TEN-Q-F15-03, 15th floor, tower-Q [page 56 of reply]
3.	Provisional allotment letter dated	06.04.2011 [annexure R3, page 49 of reply]
4.	Date of execution of buyer's agreement	30.04.2011 [page 54 of reply]
5.	Possession clause	***14. 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 start of construction****. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of 6* ***months, for applying and obtaining the completion certificate/ occupation certificate*** *in respect of*

		complex (Emphasis supplied) [page 70 of reply]
6.	Due date of possession	11.08.2012 [**Note:** Grace period is not included]
7.	Total consideration as per statement of account dated 30.11.2021 at page 125 of reply	Rs. 1,18,70,217/-
8.	Total amount paid by the complainants as per statement of account dated 30.11.2021 at page 125 of reply	Rs. 1,18,70,217/-
9.	Occupation certificate	25.01.2018 [page 116 of reply]
10.	Offer of possession	14.03.2018 [annexure R6, page 118-124 of reply]
11.	Unit handover letter signed by the complainants on	09.04.2018 [annexure R8, page 128 of reply]
12.	Conveyance deed executed on	15.05.2018 [page 132 of reply]

B. Facts of the complaint

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

   i. That the complainants submitted in the month of Feb 2011, the respondent through its business development associate approached the complainants with an offer to invest and buy a flat in the proposed project of respondent, which the respondent was

going to launch the project namely "**The Enclave**" in the Sector-66, Gurugram (hereinafter referred to as "said project"). On 16/03/2011 complainants had a meeting with respondent at the respondents branch office at "Emaar Business Park, MG road, sikanderpur chowk, sector 28, where the respondent explain the project details of "**The Enclave**" part of larger planned master development " **The Palm Drive**" and highlight the amenities of the project (**The Enclave**) like club lounge, club cafe, reading corner, home theatre room, multi-purpose function hall, world class gymnasium, saunas and steam rooms, swimming and fun pool with jacuzzi and water spout, tennis courts, recreational putting green, kid's playground, fitness park, jogging trail , community roof garden and barbeque area and many more and told that tower P and Q is only available for advance booking, on relaying on these details complainants enquire the availability of flat on 15th floor in tower Q which was a unit consisting area 1920 sq. ft. respondent represented to the complainants that the respondent is a very ethical business house in the field of construction of residential and commercial project and in case the complainants would invest in the project of respondent then they would deliver the possession of proposed flat on the assured delivery date as per the best quality assured by the respondent.

ii. The respondent had further assured to the complainants that the respondent has already processed the file for all the necessary sanctions and approvals form the appropriate and concerned authorities for the development and completion of said project on

time with the promised quality and specification. The respondent had also shown the brochures and advertisement material of the said project to the complainants given by the respondent and assured that the allotment letter and builder buyer agreement for the said project would be issued to the complainants within one week of booking to made by the complainants. The complainants while relying upon those assurances and believing them to be true, complainants booked a residential flat bearing no. TEN-Q-F15-03, 15 floor in tower Q in the proposed project of the respondent measuring approximately super area of 1920 sq. ft. (178.37 Sq. meter) in the township to be developed by respondent. Accordingly, the complainants have paid Rs. 7,50,000/- through cheque bearing No 204746 dt 16/03/2011 as booking amount on 16/03/2011.

iii. That approximately after one month on 30/04/2011 the respondent issued a builder buyer agreement which consisting very stringent and biased contractual terms which are arbitrary, unilateral and discriminatory in nature, because every clause of agreement is drafting in a one-sided way and a single breach of unilateral terms of builder buyer agreement by complainants, will cost him forfeiting of 15% of total consideration value of unit. complainants also opposed the charges for open parking as the open parking can't be sold but respondent didn't pay any heed to it. respondent exceptionally increase the net consideration value of flat my adding EDC, IDC and PLC and when complainants opposed the unfair trade practices of respondent they inform that EDC, IDC

and PLC are just the government levies and they are as per the standard rules of government and these are just approximate values which may come less at the end of project and same can be proportionately adjusted on prorate basis and about the delay payment charges of 24% they said this is standard rule of company and company will also compensate at the rate of Rs. 5 per sq. ft per month in case of delay in possession of flat by company. complainants opposed these arbitrary, unilateral and discriminatory terms of builder buyer agreement but as there is no other option left with complainants because if complainants stop the further payment of instalments, then in that case respondent will forfeit 15% of total consideration value from the total amount paid by complainants.

iv. That the complainants have paid the entire sale consideration along with applicable taxes to the respondent for the said flat. As per the statement dated 21.03.2018, issued by the respondent, upon the request of the complainants, the complainants have already paid Rs. 1,14,98,904/- towards total sale consideration and applicable taxes as on today to the respondent as demanded time to time and now nothing is pending to be paid on the part of complainants. Although the respondent charges Rs 1,46,747/- extra from complainants.

That on the date agreed for the delivery of possession of said unit as per date of booking and later on according to the flat buyer's agreement is **11th August 2012**, the complainants had approached the respondent and its officers for inquiring the status of delivery

of possession, but none had bothered to provide any satisfactory answer to the complainants about the completion and delivery said flat.

v. That the offer of possession offered by respondent through "intimation of possession" was not a valid offer of possession because respondent offered the possession on dated 14th March 2018 with stringent condition to pay certain amounts which are never be a part of agreement as on 14th March 2018 project was delayed approx. five and half year. At the time of offer of possession builder did not adjust the penalty for delay possession as per RERA Act 2016. In case of delay payment, builder charged the penalty @24% per annum and at the time of delay in possession builder give only Rs. 5/- per sq. ft per month of delay, this is arbitrary, unilateral and discriminatory. Respondent also demanded an indemnity-cum-undertaking along with final payment, which is a unilateral demand. Respondent did not even allow complainants to visit the property at said flat before clearing the final demand raised by respondent along with the offer of possession. Respondent demanded one year advance maintenance charges from complainants which was never agreed under the buyer's agreement and respondent also demanded Rs 1,46,747/- in the name of "other charges" (which includes Rs 12,626/- for electric meter charges, Rs 20,013/- for gas connection charges, Rs 80747/- for electrification charges, Rs. 1700 for sewerage charges, Rs 14,160/- for administration charges and Rs 17,501/- for registration charges) which is also a

unfair trade practice. After receiving the possession letter by email on 14th March 2018 the complainants wrote an email to respondent and complained about his unfair calculation of delay possession penalty, but respondent did not respond.

vi. After many telephones calls respondent sent an email dated 21 March 2018 stating that credit entry at serial no 45 of the statement (Rs 5,84,544/-) is the compensation, is not as per the RERA Act as requested by complainants in his email. Nothing changed and respondent does not want to answer any query before getting complete payment against his final demand. Respondent left no other option to complainants, but to pay the payment of one year maintenance charges Rs. 69,120/- and Rs. 6,39,060/- towards e-stamp duty for above said unit no. TEN-Q-F15-03, The Enclave in addition to final demand raised by respondent along with the offer of possession. Respondents give physical handover of aforesaid property on date 09.04.2018.

That the cause of action accrued in favour of the complainants and against the respondent on 16.03.2011 when the complainants had booked the said flat and it further arose when respondent failed/neglected to deliver the said flat on proposed delivery date. The cause of action is continuing and is still subsisting on day-to-day basis.

C. Relief sought by the complainants

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

i. Direct the respondent to pay interest at the rate of 18% on account of delay in offering of possession.

ii. Direct the respondent to return of Rs. 1,46,747/- charged by the respondent in the name of other charges which includes, electric meter charges, electrification charges, sewerage charges, administrative charges and registration charges unreasonably charged by the respondent by increasing sale price after execution of buyer's agreement between respondent and complainants.

iii. Direct the respondent to return entire amount of Rs. 1,50,000/- plus taxes charged for open car parking.

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

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

i. That the complainants have not come before this authority with clean hands and have suppressed vital and material facts from this hon'ble authority. The correct facts are set out in the succeeding paras of the present reply. That the complainants are not an "allottees" but are investors who have booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale. The apartment in question has been booked by the complainants as a speculative investment and not

for the purpose of self-use as their residence. Therefore, no equity lies in favour of the complainants.

ii. That buyer's agreement dated 30.04.2011 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. it is submitted that the complainants out of their own free will and volition, without any inducement, force, misrepresentation or coercion of the respondent purchased the said unit with open eyes and hence, cannot claim any compensation from the respondent. The said position was duly accepted and acknowledged by complainants. The complainants are conscious and aware of the fact that they are not entitled to any right or claim against respondent. the complainants have intentionally distorted the real and true facts and has filed the present complaint in order to harass the respondent and mount undue pressure upon it. It is submitted that the filing of the present complaint is nothing but an abuse of the process of law.

iii. That the allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially and further causes enormous business losses to the respondent. That the respondent, despite defaults of several allottees earnestly fulfilled its obligations under the buyer's agreement and completed the project as expeditiously as possible in the facts and circumstances of the case. Therefore, there is no equity in favour of the complainants.

iv. That the clause 16(a) of the buyer's agreement provides that compensation for any delay in delivery of possession shall only be given to such allottees who are not in default of their obligations envisaged under the agreement and who have not defaulted in payment of instalments as per the payment plan incorporated in the agreement. In case of delay caused due to non- receipt of occupation certificate, completion certificate or any other permission/sanction from the competent authorities, no compensation or any other compensation shall be payable to the allottees. It is submitted that the complainants by way of instant complaint is demanding interest for alleged delay in delivery of possession. The interest is compensatory in nature and cannot be granted in derogation and ignorance of the provisions of the buyer's agreement. That, without admitting or acknowledging the truth or legality of the allegations advanced by the complainants and without prejudice to the contentions of the respondent, it is respectfully submitted that the provisions of the act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. Merely because the act applies to ongoing projects which are registered with the authority, the act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainants for seeking interest cannot be called in to aid in derogation and ignorance of the provisions of the buyer's agreement. The interest is compensatory in nature and cannot be granted in derogation and ignorance of the provisions of

the buyer's agreement. It is submitted that the interest for the alleged delay or compensation demanded by the complainants is beyond the scope of the buyer's agreement and the same cannot be demanded by the complainants being beyond the terms and conditions incorporated in the buyer's agreement.

v. That it is pertinent to mention that after execution of the unit handover letter dated 09.04.2018 and obtaining of possession of the unit in question, the complainants are left with no right, entitlement or claim against the respondent. The transaction between the complainants and the respondent stands concluded and no right or liability can be asserted by the respondent or the complainants against the other. It is pertinent to take into reckoning that the complainants have obtained possession of the unit in question and the complaint is a gross misuse of process of law. The contentions advanced by the complainants in the false and frivolous complaint are barred by estoppel. That it is pertinent to mention that after execution of the unit handover letter dated 09.04.2018 and obtaining of possession of the unit in question, the complainants are left with no right, entitlement or claim against the respondent. The transaction between the complainants and the respondent stands concluded and no right or liability can be asserted by the respondent or the complainants against the other. It is pertinent to take into reckoning that the complainants have obtained possession of the unit in question and the complaint is a gross misuse of process of law. The contentions advanced by the

complainants in the false and frivolous complaint are barred by estoppel.

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.

E. Jurisdiction of the authority

8. 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 complainants at a later stage.

F. Findings on the objections raised by the respondent

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

11. One of the contentions of the respondent is that the authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The respondent further submitted that the provisions of the Act are not retrospective in nature and the provisions of the Act cannot undo or modify the terms of buyer's agreement duly executed prior to coming into effect of the Act.

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

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

contemplate rewriting of contract between the flat purchaser and the promoter.....

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

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

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

14. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the buyer's agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in

contravention of the Act and are not unreasonable or exorbitant in nature.

F.II 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 unit hand over letter dated 09.04.2018 the complainants have 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. In the complaint bearing no. ***4031 of 2019*** titled as ***Varun Gupta V/s Emaar MGF Land Ltd.,*** the authority has comprehensively dealt with this issue and has held that the aforesaid unit handover letter does not

preclude the complainants from exercising their right to claim delay possession charges as per the provisions of the Act.

In light of the aforesaid order, the complainants are entitled to delay possession charges as per provisions of the Act despite signing of indemnity at the time of possession or unit handover letter.

G. Findings on the reliefs sought by the complainants

G.I Direct the respondent to pay interest at the rate of 18% on account of delay in offering of possession.

G.II Direct the respondent to return of Rs. 1,46,747/- charged by the respondent in the name of other charges which includes, electric meter charges, electrification charges, sewerage charges, administrative charges and registration charges unreasonably charged by the respondent by increasing sale price after execution of buyer's agreement between respondent and complainants.

G.III Direct the respondent to return entire amount of Rs. 1,50,000/- plus taxes charged for open car parking.

17. 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."*

18. Clause 14(a) of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

> **"14. 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 start of construction****. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of 6* ***months, for applying and obtaining the completion certificate/ occupation certificate*** *in respect of complex.*

19. 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.

20. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 24 months from the start of construction and further provided in agreement that promoter shall be entitled to a grace period of 6 months for applying and obtaining the completion certificate/ occupation certificate in respect of the complex. The date of execution of buyer's agreement is 30.04.2011. The period of 24 months expired on 11.08.2012. 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 6 months cannot be allowed to the promoter at this stage.

21. **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.

22. 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.

23. 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., 17.08.2022 is 8%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10%.

24. 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;"

25. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10% by the respondent/promoter

which is the same as is being granted to the complainants in case of delayed possession charges.

26. Considering the above-mentioned facts, the authority calculated due date of possession according to clause 14 of the buyer's agreement dated 30.04.2011 i.e., 24 months from the date of start of construction execution and disallows the grace period of 6 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. 11.08.2012 till handover of possession i.e. 09.04.2018.** The amount of compensation already paid to the complainants by the respondent as delayed compensation as per the buyer's agreement shall be adjusted towards delay possession charges payable by the promoter at the prescribed rate of interest to be paid by the respondent as per the proviso to section 18(1) of the Act.

G.II Direct the respondent to return of Rs. 1,46,747/- charged by the respondent in the name of other charges which includes, electric meter charges, electrification charges, sewerage charges, administrative charges and registration charges unreasonably charged by the respondent by increasing sale price after execution of buyer's agreement between respondent and complainants.

Electric, and sewerage connection charges: The promoter would be entitled to recover the actual charges paid to the concerned departments from the complainants/allottee on pro-rata basis on account of electricity connection and sewerage connection, etc., i.e.,

depending upon the area of the flat allotted to the complainants vis-à-vis the area of all the flats in this particular project. The complainants would also be entitled to proof of such payments to the concerned departments along with a computation proportionate to the allotted unit, before making payments under the aforesaid heads.

- **Administrative charges**

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 thatthe registration of property at the registration office is mandatory for execution of the conveyance (sale) deed between the developers (seller) and the homebuyer (purchaser). Besides the stamp duty, homebuyers also pay for execution of the conveyance/sale deed. This amount, which is given to the developers in the name of registration charges, is significant. The authority considering the pleas of the developer-promoter directs that a nominal amount of up to Rs.15000/- can be charged by the promoter – developer for any such expenses which it may have incurred for facilitating the said transfer as has been fixed by the DTP office in this regard. For any other charges like incidental/miscellaneous and of like nature, since the same are not defined and no quantum is specified in the builder buyer's agreement, therefore, the same cannot be charged.

In the present complaint, the respondent has charged an amount of ₹ 12,000/- towards administrative charges which is less than 15,000/- therefore, the complainants are liable to pay the same.

- **Electrification 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 promoter cannot charge electrification charges from the allottees while issuing offer of possession letter of a unit even though there is any provision in the builder buyer's agreement to the contrary.

G. III Direct the respondent to return entire amount of Rs. 1,50,000/- plus taxes charged for open car parking.

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 open parking spaces cannot be sold/charged by the promoter both before and after coming into force of the Act. However as far as issue regarding covered car parking is concerned where the said agreements have been entered into before coming into force the Act, the matter is to be dealt with as per the provisions of the builder buyer's agreement subject to that the allotted parking area is not included in super area.

In the present complaint, the respondent has charged Rs.1,50,000/- towards one stilt car parking as per clause 1.2(a) and 1.3 and the same are reproduced below:

> ***1.2 Sale Price for Sale of Unit***
>
> ***(a) Sale Price***
>
> *(i) The sale price of the Unit ("Total Consideration") payable by the Allottee(s) to the Company includes the basic sale price ("Basic Sale Price/BSP") of Rs. 102102480/-, EDC of Rs. 55718.4/-, PLC of Rs. 288000/-*

and exclusive right to use one stilt car parking which shall be Rs. 1,50,000/-.....

1.3 Parking Space

a) The Allottee(s) agrees and understands that the exclusively reserved one car parking space assigned to the Allottee shall be understood to be together with the Unit and the same shall not have any independent legal entity detached or independent from the said Unit. The Allottee(s) undertakes not to sell/ transfer/deal with such exclusive reserved car parking space independent of the said Unit. In case the Allottee has applied for additional parking space, same shall be subject to availability at the then prevailing rates and the same shall also be subject to this condition. However, such additional parking space can only be transferred to any other allottee in the building/project

In the instant matter, the subject unit was allotted to the complainants vide allotment letter dated 06.04.2011 and as per the said allotment letter, the respondent had charged a sum of Rs.1,50,000/- on account of car parking charges. As per clause 1.2(a)(i) of the buyer's agreement 30.04.2011 the allottee had agreed to pay the parking charges for covered car parking. The cost of parking of Rs.1,50,000/- has been charged exclusive to the basic price of the unit as per the terms of the agreement. The cost of parking of Rs.1,50,000/- has already been included in the total sale consideration and the same is charged as per the buyer's agreement. Accordingly, the promoter is justified in charging the same.

27. 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 @ 10 % p.a. w.e.f. 11.08.2012 till handing over of possession i.e. 09.04.2018.

H. Directions of the authority

28. 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. 10% per annum for every month of delay on the amount paid by the complainants from 11.08.2012 till handing over of possession i.e. 09.04.2018. 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 after adjustment of delay compensation amount which is already paid at the time of handing over of possession.

ii. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delay possession charges as per section 2(za) of the Act.

iii. **Administrative charges:-** The authority considering the pleas of the developer-promoter directs that a nominal amount of up to Rs.15000/- can be charged by the promoter – developer for any such expenses which it may have incurred for facilitating the said transfer as has been fixed by the DTP office in this regard. For any other charges like incidental/miscellaneous and of like nature, since the same are not defined and no quantum is specified in the builder buyer's agreement, therefore, the same cannot be charged.

iv. **Electrification charges:** - That the promoter cannot charge electrification charges from the allottees while issuing offer of possession letter of a unit even though there is any provision in the builder buyer's agreement to the contrary.

v. **Car parking charges: -** The cost of parking of Rs.1,50,000/- has been charged exclusive to the basic price of the unit as per the terms of the agreement. The cost of parking of Rs.1,50,000/- has already been included in the total sale consideration and the same is charged as per the buyer's agreement. Accordingly, the promoter is justified in charging the same.

vi. 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.

29. Complaint stands disposed of.

30. File be consigned to registry.

(Vijay Kumar Goyal)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.08.2022