



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

Date of decision: 08.09.2022

Name of the Builder		Emaar MGF Land Limited	
Project Name		Gurgaon Greens	
S.no.	Complaint No.	Complaint title	Attendance
1.	CR/4646/2021	Banita Mehta and Shristhi Mehta vs. Emaar MGF Land Limited	Ms. Sambhavi M. Shri Harshit Batra
2.	CR/4645/2021	Banita Mehta and Shrijan Mehta vs. Emaar MGF Land Limited	Ms. Sambhavi M. Shri Harshit Batra
3.	CR/544/2022	Girish Kumar vs. Emaar MGF Land Limited	Shri Sanjeev Sharma Shri Dhruv Rohatgi
4.	CR/1495/2022	Surender Malik and Dimple Malik vs. Emaar MGF Land Limited	Shri Sanjeev Sharma Shri Dhruv Rohatgi

CORAM:

Dr. K.K. Khandelwal	Chairman
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member

ORDER

1. This order shall dispose of all the 4 complaints titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, **Palm Premiere at Palm Hills** (group housing project) being



developed by the same respondent/promoter i.e., **Emaar MGF Land Limited**. The terms and conditions of the builder buyer's agreements fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of delayed possession charges, possession and the execution of the conveyance deeds.

3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, amount paid up, and reliefs sought are given in the table below:

Project: Palm Premiere at Palm Hills							
Possession clause: Clause 11							
<u>Time of handing over the Possession</u>							
<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 33 months from the date of start of construction, subject to timely compliance of the provision of the buyers agreement by the allottee. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of three months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project.</i></p>							
<p>Note: 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.</p>							
Sr. no	Complaint no./title/ date of complaint	Reply status	Unit No. and area admeasure-eing	Date of execution of buyers agreement	Due date of possession	Total sale consideration and amount paid by the Complainant (s)	Relief Sought



1.	CR/4646/20 21 case titled as Banita Mehta and Shristhi Mehta vs. Emaar MGF Land Limited	Reply received on 01.02.20 22	PH3-19- 0801, 8th floor, [page 41 of complaint]	24.12.2010 [page 37 of complaint]	25.11.2014 [due date of possession is calculated from the date of start of construction i.e. 25.02.2011] Offer of possession:- 27.12.2019	TSC: Rs. 70,92,465/- AP: Rs. 71,36,666/- (As per statement of account dated 24.01.2022 at page 143 of reply	1. Direct the respondent to handover the possession of the allotted unit along with prescribed rate of interest. 2. Grant the cost of litigation amounting Rs. 1,00,000/- in favour of the complainant and against the respondent.
2.	CR/4645/20 21 Case titled as Banita Mehta and Shrijan Mehta V/s Emaar Land Ltd.	Reply received on 01.02.20 22	PH3-20- 0802, 8th floor, [page 41 complaint]	11.10.2010 [page 41 of complaint]	25.11.2014 [due date of possession is calculated from the date of start of construction i.e. 25.02.2011] Offer of possession:- 27.12.2019	TSC: Rs. 70,53,159/- AP: Rs. 72,99,947/- (As per statement of account dated 27.01.2022 at page 122 of reply	1. Direct the respondent to handover the possession of the allotted unit along with prescribed rate of interest. 2. Grant the cost of litigation amounting Rs. 1,00,000/- in favour of the complainant and against the respondent.
3.	CR/544/20 22 case titled as Girish Kumar Vs. Emaar MGF Land Ltd.	Reply received on 12.05.20 22	PH3-82- 1102, 11th floor, [page 47 reply]	05.05.2011 [page 45 of reply]	30.03.2014 [due date of possession is calculated from the date of start of construction i.e. 30.03.2011] Offer of possession:- 07.01.2020	TSC: Rs. 75,12,035/- [page 75 of reply] [Rs. 79,75,230/- as per SOA dated 06.02.2020 page 16 of the complaint] AP: Rs. 77,70,450/- [as per SOA dated 06.02.2020 page 16 of the complaint]	1. Vacate the pre cancellation notice issued by the promoter and pay delayed period interest on the amount paid by the complainant. 2. Promoter be order to pay for harassment caused to the complainant as damages along with the cost of litigation to the tune of Rs. 1,00,000/- only.



4.	CR/1495/2022 case titled as Surender Malik and Dimple Malik Vs. Emaar MGF Land Ltd.	Reply receiv ed on 31.05. 2022	PH4-67- 0801, 8th floor, [page 34 of reply]	21.09.2010	20.11.2014 [due date of possession is calculated from the date of start of construction i.e. 23.01.2020] Offer of possession:- 30.12.2019	TSC: Rs. 76,02,658/- [page 62 of reply] [Rs. 80,75,478/- as per SOA dated 23.01.2020 page 70 of the complaint] AP: Rs. 84,10,297/- [as per SOA dated 23.01.2020 page 70 of the complaint]	Direct the respondent to handover the possession of the allotted unit along with prescribed rate of interest.
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Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviations Full form

TSC- Total Sale consideration

AP- Amount paid by the allottee(s)

DPC- Delayed possession charges

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties *inter se* in respect of said unit for not handing over the possession by the due date, seeking award of delayed possession charges, possession and vacate the pre cancellation notice issued by the promoter.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/1495/2022 Case titled as Surender Malik and Dimple Malik V/s**



Emaar MGF Land Ltd. are being taken into consideration for determining the rights of the allottee qua delay possession charges.

A. Project and unit related details

7. 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	Palm Premier at Palm Hills, Sector 77, Gurugram, Haryana
2.	Area of the project	24.477 acres
3.	DTCP license no.	56 dated 31.08.2009 valid upto 30.08.2024
4.	Unit no.	PH4-67-0801, 8 th floor [page 34 of reply]
	Provisional allotment letter dated	30.04.2010 [page 28-29 of reply]
	Date of execution of buyer's agreement	21.09.2010 [page 31 of reply]
	Possession clause	11. POSSESSION (a) Time of handing over the Possession <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 33 months from the date of start of construction, subject to timely compliance of the</i>



		<p><i>provision of the buyers agreement by the allottee. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of three months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project.</i></p> <p>(Emphasis supplied)</p>
5.	Date of start of construction as per statement of account dated 23.01.2020 on page 70 of complaint	20.02.2012
	Due date of possession	20.11.2014
	Total consideration as per payment plan	Rs. 76,02,658/- [page 62 of reply] [Rs. 80,75,478/- as per SOA dated 23.01.2020 page 70 of the complaint]
	Total amount paid by the complainant as per statement of account dated 23.01.2020 page 70 of the complaint]	Rs. 84,10,297/-
6.	Occupation certificate	24.12.2019 [page 126-129 of reply]
7.	Offer of possession	30.12.2019 [page 130-134 of reply]
8.	Unit handover letter dated	23.09.2020 [page 138 of reply]

B. Facts of the complaint

8. The complainants have made the following submissions in the complaint:
- That the representation by the respondent no. 1 and advertisement done in said behalf, the respondent was to construct a group housing



- residential complex namely "PALM HILLS" on parcel of land measuring 24.477 acres belonging to respondent no. 2 i.e., license holder, located at sector-77, Gurgaon, Haryana for which the respondent was granted license no. 56 of 2009 dated 31.08.2009 by the DTCP.
- ii. The complainants are the original allottee/purchaser wherein the complainants showed the interest in purchasing a unit with the respondent vide their application dated 01.04.2010 and made a payment of Rs. 5,00,000/- in favour of respondent upon the inducement that the possession of the unit purchased shall be handed over on time with all amenities as promised. That the complainants and the respondents entered into the buyer's agreement on 21.09.2010 for unit no. PH4-67-0801, 8th floor, tower/block-67, admeasuring 1950 sq. ft. for a total sale consideration of Rs. 76,02,658.72/-. Clause 11(a) talks about handing possession within 33 months from the date of start of construction however, the date of possession is calculated from the 20.02.2012 which comes out to be 20.11.2014.
- iii. That the complainants have made a total payment of Rs. 84,10,297/- between April 2010 to January 2022 as and when demanded by the respondent without any delay. That despite making the payment of the aforementioned amount, the possession of the unit in question was offered on 31.01.2020 without any interest on the delay possession by the respondent no. 1 and the respondent no. 1 got the unit handover letter signed by the complainants on 23.09.2020 despite the fact the conveyance deed has not been executed till date.
- iv. That the complainants have approached the hon'ble authority under section 31 of the Act which states,



“Section 31. Filing of complaints with the Authority or the adjudicating officer.

(1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder, against any promoter, allottee or real estate agent, as the case may be.

Explanation. --For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be [prescribed].”

- v. That the complainants seek indulgence of the authority in grant of possession along with delay possession interest by the respondent and execution of the conveyance deed. It is humbly submitted that the complainants have already paid amount more than the sale consideration and then also the respondent no. 1 vide email dated 03.01.2022 are demanding more money in the name of deficit stamp charges amounting to Rs. 1,36,600/-. That the complainants also reserve their right to file separate complaint for compensation as and when required before the appropriate forum/ authority.

C. Relief sought by the complainants:

9. The complainants have sought following relief(s):
- (i) Direct to the respondent to handover the possession of the unit along with prescribed rate of interest.
10. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent

11. The respondent has contested the complaint on the following grounds.



- i. That the complainants have not approached the authority with clean hands. That the complainants enjoy the possession of the unit and have been in peaceful possession of the unit for over 1.5 years. That approaching this forum with half-cooked and manipulated stories is a grave violation of the doctrine of clean hands and hence, this complaint is liable to be dismissed on this ground alone.
- 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 21.09.2010. The speculations, assertions, and incorrect interpretations of the terms and conditions of the allotment, buyer's agreement is wrong and vehemently denied.
- iii. That the original allottee, Mr. Surinder malik (the first complainant herein) being interested in the real estate development of the respondent, a group housing colony known as "Palm Hills" situated at Shikohpur, Tehsil and District Gurgaon tentatively applied for provisional allotment via application form dated 01.04.2010 and was consequently allotted unit no. PH4-67-0801 has a super area of 1950 sq. ft. via allotment letter dated 30.04.2010. Thereafter, a buyer's agreement dated 21.09.2010 was executed with the original allottee in regard to the unit.
- iv. At the outset, it is important to note that the original allottee requested for the addition of name of Ms. Dimple Malik D/o Surinder Malik as a co-allottee in the unit. In this regard, Mr. Surinder Malik executed an affidavit and indemnity cum undertaking noting the transfer to arise due to love and affection for her daughter, Ms. Dimple Malik, who had also executed an affidavit in this regard. The respondent no. 1 in its



utmost *bonafide*, accepted the request of the complainants on 21.03.2018 and consequently, the unit was endorsed to the complainants. At this instance, it needs to be categorically noted that the terms and conditions of the application form, allotment and the agreement were completely understood by the parties and willingly and voluntarily agreed to thereof. That the relationship between the parties is contractual and is determined by the terms and conditions of the buyer's agreement executed with the original allottee.

- v. That as per clause 11(a) of the buyer's agreement, the delivery of possession of the unit was proposed to be within 33 months from the date of construction (20.02.2012) and a grace period of 3 months, i.e., **20.02.2015**. That the delivery of possession of the unit was "*Subject to the terms of this clause and subject to the Allottee(s) having timely complied with all the terms and conditions of this Buyer's Agreement and not being in default under any provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation, etc...*".
- vi. That the delivery of possession of the unit was extendable in case of delay in payment by the complainants as per clause 11b(iv), which is reiterated as under:

The Allottee(s) agrees and accepts that in case of any default/delay in payment as per the schedule of payments as provided in Annexure - 3, the date of handing over of the possession shall be extended accordingly solely at the Company's discretion till the payment of all outstanding amounts to the satisfaction of the Company.

- vii. That it is a matter of record that the delay payments were made by the complainants and consequently, delay possession charges were paid, as and when applicable. That it must be noted by the authority that despite the default caused by the complainants in fulfilling its



obligations, the respondent did not default and instead completed the construction of the project without having regular payment of monies by the allottees like the complainants. That in case of delays caused in making payments against the unit, the proposed due date of delivery of possession is liable to be extended. That is known and practically understood that regular and timely payments by the allottees are pertinent towards the completion of a real estate project, yet, without the same being done in the present case, the respondent has shown exemplary conduct as a real estate promoter which should be duly taken into account.

- viii. Furthermore, the delivery of possession was further subject to *force majeure* conditions as spelled out in Clause 27 of the buyer's agreement, reiterated as under:

"The handover of the Unit shall be subject to force majeure clause which, inter alia, includes delay on account of non-availability of steel and/or cement and/or other Builder materials, water supply or electric power or slow down strike or due to a dispute with the construction agency employed by the Company, civil commotion or by reasons of war, enemy action, earthquake or any act of God. If there is any delay in the delivery of possession of the Unit or the Company is unable to deliver possession of the Unit due to a force majeure event or due to any notice, order, rule, or notification of the Central or State Government and/or any other public or competent authority or for any other reason beyond the control of the Company, shall be entitled to a reasonable extension of the time for delivery of possession of the Unit. The Lessee understands and acknowledges that if due to any force majeure conditions, the whole or part of the Project is abandoned or abnormally delayed, the Lessee shall not be entitled to prefer any claim whatsoever except that the Company shall on demand refund the Lessee's money"

- ix. 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 no. 1 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.

That also, without admitting or acknowledging in any manner the truth or legality of the allegations leveled by the complainants and without prejudice to the contentions of the respondent, it is submitted that the project got delayed on account of the following reasons which were(are) beyond the power and control of the respondent:

- i The building plans for the apartment/tower in question was approved by the competent authority under the then applicable National Building Code in terms of which buildings having a height of 15 meters or above but having an area of fewer than 500 sq. meters on each floor, were being approved by the competent authorities with a single staircase and construction was being carried out accordingly. Subsequently, 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. Furthermore, it was notified vide Gazette published on 15.03.2017 that the provisions of NBC 2016 supersede those of NBC 2005.
- ii The Fire Department is seeking to retrospectively apply the said provision and while processing the Fire NOC application has been



insisting on two staircases in all high-rise buildings even in cases where the building plans stood approved with a provision for a single staircase and which have been constructed accordingly. The Fire Department has issued a provisional Fire NOC with the requirement that the second staircase would be constructed by the Developer within one year from the date of issuance of the provisional Fire NOC.

- iii The practical difficulties in constructing a second staircase in a building that already stands constructed according to duly approved plans, the respondent made several representations to various government authorities requesting that the requirement of a second staircase in such cases be dispensed with. It was pointed out by the respondent that construction of a second staircase would not be possible for several technical reasons such as obstruction of fire tender path, violation of the setback norms, violation of fire safety norms in as much as the second staircase would not be connected to the common lobby area and that construction of the second staircase by connecting balconies of the dwelling units would pose a security and privacy concern. The respondent no. 1 had also pointed out that the allottees of the dwelling units were also eagerly awaiting possession of their units for a long and requested that the Fire NOC be issued without any preconditions.
- iv The fire department inspected the site of the project and sought alternate proposals from the respondent to meet the requirement of a second staircase in the buildings in question. The respondent accordingly submitted various proposals to the fire department and the chief minister.



- v Eventually, to not cause any further delay in the project and to avoid jeopardizing the safety of the occupants of the buildings in question including the building in which the apartment in question is situated, the respondent decided to go ahead and construct the second staircase.
- vi That it is also pertinent to mention herein that the respondent had engaged the services of Mitra Guha, a reputed contractor in real estate, to provide multilevel car parking in the project. The said contractor started raising certain false and frivolous issues with the respondent due to which the contractor slowed down the progress of work at the site. Despite repeated reminders from the respondent to the contractor to expedite work at the site, the contractor continued to work at a slow pace due to reasons best known to him and due to his lackadaisical performance, the construction of the project was slowed down and the whole project got delayed. The respondent, in good faith, hired the services of the contractor believing him to be a reputed contractor in the real estate industry and any lack in performance from a reputed contractor cannot be attributed to the respondent as the same was beyond its control.

That all these circumstances come within the purview of the *force majeure* clause and hence allow a reasonable time to the respondent builder. That it must also be noted that the respondent had the right to suspend the construction of the project upon happening of circumstances beyond the control of the complainant as per clause 11(b)(i), however, despite all the hardships faced by the respondent, the respondent no. 1 did not



suspend the construction and managed to keep the project afloat through all the adversities.

- x. That the respondent has complied with all of its obligations, not only concerning the buyer's agreement with the complainants but also as per the concerned laws, rules, and regulations thereunder and the local authorities. That despite the innumerable hardships being faced by the respondent, the respondent completed the construction of the project and applied for part occupation certificate vide an application dated 21.02.2019 before the concerned authority and successfully attained the occupation certificate dated 24.12.2019. 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, 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 no. 1 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 utilized by the statutory authority to grant occupation certificate to the respondent is necessarily required to be excluded from computation of the time period utilized for implementation and development of the project. That thereafter, and only after obtaining the requisite permissions, the respondent legally offered the possession of the unit to the complainants on



30.12.2019. The complainants thereafter executed the indemnity cum undertaking for possession on 06.01.2020 and subsequently, the physical possession of the unit was taken on 23.09.2020. 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 23.09.2020.

The present complaint has been filed for seeking possession of the unit, which, has already been given to the complainants. The respondent has made good on all parts of its obligations, under the act and the agreement. That, moreover, after taking the possession of the unit, it was the obligation of the complainants to execute the conveyance deed as per section 19(11) of the real estate (regulation and development) act, 2016, which is reiterated as under:

(11) Every allottee shall participate towards registration of the conveyance deed of the apartment, plot or building, as the case may be, as provided under sub-section (1) of section 17 of this Act.

That in furtherance of the same, it was the obligation of the complainant to make the payment of stamp duty as noted in clause 5 of the agreement and was also noted by this hon. Authority in **Abhishek Ashok Kumar Saxena v Emaar 3085/2021**. On 03.01.2022, respondent informed the complainant about the pending execution of the conveyance deed and the payment of stamp duty by the complainant. That



respondent had categorically noted that excess balance of Rs. 1,81,369 available in the statement of the complainant shall be adjusted towards the payment of stamp duty and the remaining amount of Rs. 91,831 need to be paid by the complainant in order to move ahead with the execution of the conveyance deed. However, in utmost *malafide*, the complainants have not made the pending payments till date and are solely responsible for delay in execution of the conveyance deed.

That the complainants have defaulted on their part in fulfilling the obligations as set under the law and the contract and yet, have filed the present complaint. 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 its 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.

That in the meanwhile, the respondent had registered the project under the act. The respondent completed construction and applied for the occupation certificate on 21.02.2019, which was thereafter granted by the concerned statutory authority vide memo bearing no. ZP-567-Vol-I/JD(RD)/2019/31934 dated 24.12.2019. Thereafter possession of the unit was offered to the complainants vide the letter of offer of possession letter dated 30.12.2020. Possession of the unit has been taken over by the complainants after certifying that the complainants do not have any claim of any nature whatsoever against the respondent and



that the respondent has duly discharged its obligations under the buyer's agreement upon delivery of the property.

- xi. It is pertinent to mention that respondent credited an amount of Rs. 8,53,459 (Rs. 6,28,915 on 30.12.2019 + Rs. 2,24,544 on 22.01.2020) as compensation, a sum of Rs. 5,911/- towards EPR (early payment rebate). Further, an amount of Rs 25,772 was credited towards Anti-Profiting. Without prejudice to the rights of the respondent no. 1, 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 or any taxes/statutory payments etc.

E. Jurisdiction of the authority

12. The respondent has raised preliminary objection regarding jurisdiction of authority to entertain the present complaint. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

13. 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



14. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

15. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the objections raised by the respondent:

F.I Objection raised by the respondent regarding force majeure condition:-

16. The obligation to handover possession within a period of thirty-three months was not fulfilled. There is delay on the part of the respondent the actual date to handover the possession in the year 2014 and various reasons given by the respondent is totally null and void as the due date of possession was in the year 2014 and the NGT Order referred by the respondent pertaining to year 2015/2016 therefore the respondent cannot



be allowed to take advantage of the delay on his part by claiming the delay in statutory approvals. The following reasons are given by the respondent: -
(1) delay in payments by many customers (2) delay in approval by the state government (3) NGT Order.

17. The due date of possession in the present case as per clause 11 is 20.11.2014 therefore any situation or circumstances which could have a reason prior to this date due to which the respondent could not carry out the construction activities in the project are allowing to be taken into consideration. While considering whether the said situation or circumstances was in fact beyond the control of the respondent and hence the respondent is entitled to force majeure clause 27, however all the pleas taken by the respondent to plead the force majeure condition happened after 20.11.2014. The respondent has not given any specific details with regard to delay in payment of instalments by many allottees. Similar is the position with regard to the alleged lack of infrastructure support by the state government. So far as NGT order or NCR order these events are stated to have taken place in the year 2015 and 2016 i.e., the post due delivery of possession of the unit to the complainants.

18. Accordingly, authority holds that the respondent is not entitled to invoke clause 27 delay with force majeure condition. The contention on the face of it seems to be very attractive but if we go into the depth, it is found that the contentions are infant spineless, and it is liable to be rejected. The authority while considering the facts of the case stated that it is apparent from the record that the authority **does not find any merit in any of** reasons submitted by the respondent towards the justification for the delay.

G. Findings on the relief sought by the complainants:



19. The common issues with regard to delayed possession charges & possession are involved in all these cases.

G. I Delay possession charges

20. **Relief sought by the complainants:** In the following complaints, 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."

21. Clause 11 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 **33 months from the date of start of construction, subject to timely compliance of the provision of the buyers agreement by the allottee.** The Allottee(s) agrees and understands that the Company shall be entitled to a **grace period of three months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project.***

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



terms and conditions of this agreement, and the complainant 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 allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

23. **Due date of possession and admissibility of grace period:** That the promoter has proposed to hand over the possession of the said unit within 33 months from the date of start of construction and further provided in agreement that promoter shall be entitled to a grace period of 3 months for applying and obtaining completion certificate/occupation certificate in respect of said unit. The date of start of construction is 20.02.2012 as per statement of account dated 23.01.2020. The period of 33 months expired on 20.11.2014. As a matter of fact, the promoter has not applied to the concerned authority for obtaining completion certificate/ occupation certificate within the time limit (33 months) 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, the benefit of grace period of 3 months cannot be allowed to the promoter due to aforesaid reasons.



24. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prescribed rate. Proviso to section 18 provides that where an allottees does not intend to withdraw from the project, they 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.

25. The legislature in its wisdom in the subordinate legislation under rule 15 of the rules has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
26. 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., 08.09.2022 is 8%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10%.
27. **Rate of interest to be paid by the complainant in case of delay in making payments-** The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:



"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

28. Therefore, interest on the delay payments from the complainant 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.
29. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 11 of the buyer's agreement executed between the parties on 21.09.2010, the possession of the subject unit was to be delivered within a period of 33 months from the date of start of construction plus 3 months grace period for applying and obtaining the completion certificate/ occupation certificate in respect of the unit and/or the project. The construction was started on 20.02.2012. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 20.11.2014. Occupation certificate was granted by the concerned authority on 24.12.2019 and thereafter, the possession of the subject unit was offered to the complainant on 30.12.2019. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the



part of the respondent to offer physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 21.09.2010 to hand over the possession within the stipulated period.

30. 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 24.12.2019. The respondent offered the possession of the unit in question to the complainant only on 30.12.2019, 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 they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 20.11.2014 till the expiry of 2 months from the date of offer of possession (30.12.2019) which comes out to be 01.03.2020.
31. 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 delayed possession at prescribed rate of interest i.e. 10% p.a. w.e.f. 20.11.2014 till expiry of 2 months from the date of offer of possession (30.12.2019) which comes out to be 01.03.2020 as per provisions of section 18(1) of the Act read with rule 15 of the rules.



32. Also, the amount of compensation already paid to the complainants by the respondent as delay compensation in terms of 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.

H. Directions of the authority

33. Hence, the authority hereby passes this order and issue 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):

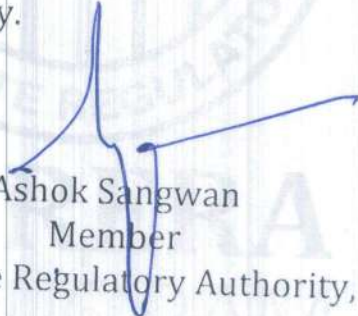
- i. The respondent/promoter is directed to pay the interest at the prescribed rate i.e. 10% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 20.11.2014 till expiry of 2 months from the date of offer of possession (30.12.2019) plus two (2) months i.e., 01.03.2020. 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 respondent/promoter is directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules and thereafter monthly payment of interest be paid till date of handing over of possession shall be paid on or before the 10th of each succeeding month.
- 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.

- iv. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - v. The rate of interest chargeable from the allottees 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 allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
34. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
35. Complaint stands disposed of. True certified copy of this order shall be placed in the case file of each matter. ~~There shall be separate decrees in individual cases~~
36. File be consigned to registry.


Sanjeev Kumar Arora
Member


Ashok Sangwan
Member


Dr. K.K. Khandelwal
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.09.2022