

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

Date of decision: 08.09.2022

<b>Name of the Builder</b>		<b>Emaar MGF Land Limited</b>	
<b>Project Name</b>		<b>Palm Gardens, Sector-83</b>	
<b>S.no.</b>	<b>Complaint No.</b>	<b>Complaint title</b>	<b>Attendance</b>
1.	CR/2698/2021	Surinder Sood and Rajeev Sood vs. Emaar MGF Land Limited	Complainant in person with Shri. Devinder Singh Shri J.K. Dang
2.	CR/4355/2021	Neera Khuntia and Sonakshi Khuntia vs. Emaar MGF Land Limited	Complainant in person with Shri Gaurav Bhardwaj Shri Harshit Batra
3.	CR/290/2022	Shyama Kumari and Sanjeet Kumar vs. Emaar MGF Land Limited	Shri Abhishek Tiwari Shri Dhruv Rohatgi
4.	CR/452/2022	Vivek Kapoor vs. Emaar MGF Land Limited	Shri Abhishek Tiwari 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 Gardens** (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 Gardens, Sector 83, Gurugram							
Possession clause: Clause 10							
<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 <b>within 36 (Thirty Six) months from the date of start of construction</b>, subject to timely compliance of the provisions of the Buyer's Agreement by the Allottee. The Allottee(s) agrees and understands that the Company shall be entitled to a <b>grace period of 3 (three) months, for applying and obtaining the completion certificate/ occupation certificate in respect of the Unit and/or the Project.</b></i></p>							
<p><b>Note:</b></p> <p>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	Complain no./title/ date of complain	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



<p>1. CR/2698/2021 case titled as Surtinder Sood and Rajeev Sood vs. Emaar MGF Land Limited</p> <p>DOR-05.07.2021</p>	<p>Reply received on 16.08.2021</p>	<p>PGN-12-0904,9<sup>th</sup> floor, tower-12</p>	<p>07.12.2011 [page 20 of complaint]</p>	<p>30.11.2015 Offer of possession: 22.10.2019</p>	<p>TSC: Rs. 92,97,037/- AP: Rs. 92,97,037/- (As per statement of account dated 14.07.2021 at page 86 of reply)</p>	<p>1. Direct the respondent to pay delayed interest @24% for delay in handing over possession in respect of the subject unit.</p>
<p>2. CR/4355/2021 Case titled as Neera Khuntia and Sonakshi Khuntia vs. Emaar MGF Land Limited</p> <p>DOR-10.11.2021</p>	<p>Reply received on 01.12.2022</p>	<p>06-1005, 10<sup>th</sup> floor, tower-06</p>	<p>03.02.2012 [page 34 of complaint]</p>	<p>09.08.2015 Offer of possession: 25.10.2019</p>	<p>TSC Rs. 94,88,812/- AP: Rs. 94,37,720/- (As per statement of account dated 25.10.2019 at page 128 of reply)</p>	<p>1.DPC 2. Direct the respondent to return the excess amount of Rs.2,68,756/- along with interest which had been wrongly demanded and deposited on account of sale price for 53 sq. ft less of super area (from 1900 sq. ft. to 1847 sq. ft.) of the allotted unit. 3. Direct the respondent to return central green preferential location charges that had been wrongly demanded by the respondent. 4. Direct the respondent to not to charge anything outside the clause mentioned in the agreement.</p>



3.	CR/290/2 021 Shyama Kumari and Sanjeet Kumar vs. Emaar MGF Land Limited  DOR- 07.02.202 2	Reply received on 12.05.20 22	1004, 10 <sup>th</sup> floor, building no.01	03.02.2012  [page 34 of complaint]	09.08.2015  Offer of possession: 25.10.2019	TSC: Rs. 94,88,813/- AP: Rs. 94,37,720/-  [As per statement of account dated 25.10.2019 at page 71 of complaint]	1. DPC 2. Direct the respondent to pay a sum of Rs. 2,00,000/- as towards litigation cost.
4.	CR/452/2 022 Vivek Kapoor vs. Emaar MGF Land Limited  DOR- 03.02.202 2	Reply received on 12.05.20 22	5-603, 6 <sup>th</sup> floor	23.03.2011  [page 37 of complaint]	09.08.2015  Offer possession: 20.03.2018 dispatch 21.03.2018	TSC: Rs. 98,24,689/- AP: Rs. 93,24,312/-  [As per statement of account dated 20.03.2018 at page 147 of reply]	1. DPC 2. Direct the respondent to pay a sum of Rs. 2,00,000/- as towards litigation cost.

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

**Abbreviations Full form**

DOR- Date of receiving complaint  
TSC- Total Sale consideration  
AP- Amount paid by the allottee(s)  
DPC- Delayed possession charges

- 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, to return unreasonably charged by increasing sale area and compensation.
- 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/2698/2021 Case titled as Surender Sood and Rajeev Sood 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:

**CR/2698/2021 Case titled as Surinder Sood and Rajeev Sood V/s Emaar MGF Land Ltd.**

Sr. No.	Particulars	Details
1.	Name of the project	Palm Gardens, Sector 83, Gurugram, Haryana
2.	Total area of the project	21.90 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	108 of 2010 dated 18.12.2010
	Validity of license	17.12.2020
	Licensee	Logical Developers Pvt. Ltd. and 2 others
	Area for which license was granted	21.9 acres
5.	HRERA registered/ not registered	<b>Registered vide no.330 of 2017 dated 24.10.2017 (1,2,6,8 to 12 and other facilities and amenities)</b>
	HRERA registration valid up to	31.12.2018



	HRERA extension of registration vide	<b>02 of 2019 dated 02.08.2019</b>
	Extension valid up to	31.12.2019
6.	Occupation certificate	17.10.2019 [annexure R7, page 89 of reply]
7.	Provisional allotment letter dated	15.11.2011 [page 17 of complaint]
8.	Unit no.	PGN-12-0904, 9 <sup>th</sup> floor, tower 12 [page 22 of complaint]
9.	Area of unit	1720 sq. ft.
10.	Date of execution of buyer's agreement	07.12.2011 [page 20 of complaint]
11.	Possession clause	<b>10. POSSESSION</b> <b>(a) Time of handing over the Possession</b> <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 (Thirty Six) months from the date of start of construction, subject to timely compliance of the provisions of the Buyer's Agreement by the Allottee. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of 3 (three) months, for applying and obtaining the completion certificate/ occupation certificate in respect of the Unit and/or the Project.</i>  (Emphasis supplied)



12.	Date of start of construction as per the statement of account dated 14.07.2021 at page 86 of reply	30.11.2012	
13.	Due date of possession	30.11.2015 [Note: Grace period is not allowed]	
14.	Total consideration	As per the statement of account dated 14.07.2021 at page 86 of reply	As per payment plan annexed with the buyer's agreement
		Rs. 92,97,037/-	Rs.91,55,598/-
15.	Total amount paid by the complainants as per the statement of account dated 14.07.2021 at page 86 of reply	Rs. 92,97,037/-	
16.	Offer of possession	22.10.2019 [annexure R9, page 161 of reply]	
17.	Unit handover letter dated	17.08.2020 [annexure R12, page 173 of reply]	
18.	Conveyance deed executed on	09.06.2021 [annexure R13, page 176 of reply]	
19.	Delay compensation already paid by the respondent in terms of the buyer's agreement as per statement of account dated 14.07.2021 at page 88 of reply	Rs.5,64,384/-	

## B. Facts of the complaint

8. The complainant has made the following submissions in the complaint:
  - i. That the respondents gave advertisement in various leading newspapers about their forthcoming project named project- "PALM GARDENS"

situated at Sector 83, promising various advantages, like world class amenities and timely completion/execution of the project etc. Relying on the promise and undertakings given by the respondents in the aforementioned advertisements the complainants, booked an apartment/flat admeasuring super area 1720 sq. ft. in aforesaid project of the respondent for total sale consideration is Rs 91,55,598.80/- which includes BSP, car parking, IFMS, Club Membership, PLC etc including taxes, and the builder buyer's agreement was executed on 07.12.2011. Out of the total sale consideration amount, the complainants made payment of Rs. 92,97,037/- to the respondent vide different cheques on different dates, the details of which are annexed with the complaint.

- ii. That as per flat buyers' agreement the respondents had allotted a unit/flat bearing No PGN-12-0904 on 9<sup>th</sup> floor having super area of 1720 sq. ft. to the complainants. That as per clause 10(a) of the builder buyer agreement, the respondents had agreed to deliver the possession of the flat within 39 months from the date of signing of the flat buyer's agreement i.e 07.12.2011 with an extended period of three months and according to that the flat was to be deliver till 07.03.2015.
- iii. That the complainants have made payments of all instalments demanded by the respondent amounting to a total sum of Rs. 92,97,037/-. That the complainants vide letter dated 22.10.2019 received letter of offer of possession with statement of final dues to be paid by 23.11.2019.
- iv. That after receiving the above said letter the complainant contacted the respondents and demanded delayed possession interest as the project



was already delayed by four years and eight months, as per the flat buyer's agreement with an extended period of three months and according to that the flat was to be delivered till 07.03.2015. The respondent assured the complainant that the delayed possession interest of the said unit/flat will be considered and will be paid after taking possession of the said unit. That after assurance by the respondent the complainant took possession of the above said unit and thereafter demanded her delayed possession interest by the respondents, but the respondent lingered on the matter by one pretext to another and did not consider genuine grievances of the complainant.

- V. That despite repeated calls, meetings with the respondent, no definite commitment was shown to pay the delayed possession interest as committed by the respondent, but no appropriate action was taken to address the concerns and grievances of the complainant. That the intention of the respondent, their officers and directors was malafide right from the beginning and has been aimed to cheat the complainant. That the respondent has committed breach of trust and have cheated the complainants by not adjusting the delayed possession interest which was to be waived off at the time of possession and are liable for acts and omissions and have misappropriated the said amount paid by the complainants and therefore, are liable to be prosecuted under the provisions of law.

**C. Relief sought by the complainants:**

9. The complainants have sought following relief(s):
- (i) Direct the respondent to pay delayed interest @ 24% for delay in handing over possession in respect of the subject unit.

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 got no locus standi or cause of action to file the present complaint. It is submitted that the present complaint is based on an erroneous interpretation of the provisions of the act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 07.12.2011 as shall be evident from the submissions made in the following paras of the present reply.
- ii. That the complainants vide application form dated 27.10.2011 applied to the respondent for provisional allotment of a unit in the project. The complainants, in pursuance of the aforesaid application form, were allotted an independent unit bearing no pgn-12-0904, located on the 9<sup>th</sup> floor, in the project vide provisional allotment letter dated 15.11.2011. The complainants consciously and willfully opted for a construction linked plan for remittance of the sale consideration for the unit in question. The complainants further undertook to be bound by the terms and conditions of the application form.
- iii. That the buyer's agreement was executed between the complainants and the respondent on 07.12.2011. It is pertinent to mention that the buyer's agreement was consciously and voluntarily executed by the complainants after reading and understanding the contents thereof to their full satisfaction. It is submitted that the rights and obligations of complainants as well as respondent are completely and entirely determined by the covenants incorporated in the buyer's agreement

which continue to be binding upon the parties thereto with full force and effect. Clause 10(a) of the buyer's agreement provides that subject to the allottee having complied with all the terms and conditions of the agreement, and not being in default of the same, possession of the apartment would be handed over within 36 months from the date of start of construction. It has further been specified in the same clause that the respondent will be entitled to a grace period of 3 months. Clause 10 (b) provides that the time period for delivery of possession shall stand extended on the occurrence of delay for reasons beyond the control of the respondent. In terms of clause 10(b)(iv) in the event of default in payment of amounts demanded by the respondent as per the schedule of payment under the buyer's agreement, the time for delivery of possession shall also stand extended.

- iv. That the complainants have consciously defaulted in timely remittance of the instalments. The respondent had issued notices and reminders calling upon the complainants to pay the amounts as per the payment plan. However, the complainants wilfully chose to ignore the payment request letters, reminders etc. sent by the respondent and continued defaulting in timely remittance of the instalments. Payment request letters, reminders, notices etc. had been got sent to the complainants by the respondent clearly mentioning the amount that was outstanding and the due date for remittance of the respective amounts as per the schedule of payments, requesting the complainants to timely discharge their outstanding financial liability but to no avail. Statement of account dated 14.07.2021 correctly maintained by the respondent in due course of its business depicting delay in remittance of various payments by the complainants is appended herewith as annexure R6.



- v. That the complainants are conscious and aware of the fact that they are not entitled to any compensation/interest in accordance with the terms and conditions incorporated in the buyer's agreement on account of the default in timely remittance of the instalments. The complainants have filed the present complaint in order to harass the respondent and compel the respondent to surrender to his illegal demands. It is submitted that the filing of the present complaint is nothing but an abuse of the process of law.
- vi. That it is pertinent to mention that clause 12 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. It is submitted that the interest demanded by the complainants is compensatory in nature. Therefore, the complainants were/are not entitled to any compensation or interest in the terms of the buyer's agreement. The complainants are seeking to obtain wrongful gain and to cause wrongful loss to the respondent.
- vii. That, furthermore, in clause 12 of the buyer's agreement it has been specified that 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 needs to be highlighted that the respondent had submitted an application dated 11.02.2019 for grant of occupation certificate before the concerned statutory authority. The occupation certificate has been granted by the

concerned department vide memo bearing no. ZP-692/AD(RA)/2019/25824 dated 17.10.2019 (annexure R7). It is respectfully submitted that once an application for grant of occupation certificate is submitted to the concerned statutory authority the respondent ceases to have any control over the same. The grant of occupation certificate is the prerogative of the concerned statutory authority, and the respondent does not exercise any influence over the same. Therefore, it is respectfully submitted that the time period utilised by the concerned statutory authority for granting the occupation certificate is liable to be excluded from the time period utilised for implementation of the project.

- viii. 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. It is further submitted that 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 refund or interest cannot be called in to aid, in derogation and ignorance of the provisions of the buyer's agreement. It is further submitted that the interest or refund sought by the complainants is beyond the scope of the buyer's agreement. The complainants cannot demand any interest or refund beyond the terms and conditions incorporated in the buyer's agreement.

- ix. That without prejudice to the contentions of the respondent, it is submitted that the present complaint is barred by limitation. The complainants have alleged that the possession of the unit was to be given not later than March 2015 and therefore cause of action, if any, accrued in favour of the complainants in March, 2015. Thus, the complaint seeking interest as a form of indemnification is barred by limitation.
- x. That without admitting or acknowledging in any manner the truth or legality of the allegations levelled by the complainants and without prejudice to the contentions of the respondent, it is submitted that the project has got delayed on account that the contractor hired by the respondent i.e. ILFS (M/s Infrastructure Leasing & Financial Services), a reputed contractor in real estate, started raising certain false and frivolous issues with the respondent due to which they had slowed down the progress of work at site. The respondent was constrained to issue several letters to ILFS requesting it to proceed and complete the construction work in accordance with the decided schedule. However, ILFS continued with its wanton acts of instigating frivolous and false disputes for reasons best known to it. It is submitted that the respondent cannot exercise any influence over the working of ILFS. ILFS has intentionally delayed the progress of construction for which the respondent cannot be held liable either in equity or in accordance with the provisions of the buyer's agreement.
- xi. That the complainants were offered possession of the unit in question vide letter dated 22.10.2019. The complainants were called upon to remit balance payment and to complete the formalities/documentation necessary for handover of the unit in question to him. However, the

complainants wilfully refrained from obtaining possession of the unit in question. It is submitted that the complainants did not have adequate funds to remit the balance payments requisite for obtaining possession in terms of the buyer's agreement and consequently in order to needlessly linger on the matter, the complainants refrained from obtaining possession of the unit in question. Therefore, there is no equity in favour of the complainants. Moreover, it is submitted that the respondent had credited an amount of Rs. 5,64,384/- to the account of the complainants as a gesture of goodwill. However, the complainants have refrained from obtaining possession of the unit in question despite receipt of the aforesaid amount. It is pertinent to mention that the respondent has also credited a sum of Rs. 9,039/- as benefit on account of early payment Rebate (EPR) and Rs. 14,876/- on account of anti-profiting. 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 principal 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.

- xii. That without admitting or acknowledging in any manner the truth or correctness of the frivolous allegations levelled by the complainants and without prejudice to the contentions of the respondent, it is submitted that the so-called interest wrongly sought by the complainants was to be construed for the alleged delay in delivery of possession. It is pertinent to note 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 had consciously refrained from obtaining possession of the unit in question. Consequently, the complainants are liable for the consequences including holding charges, as enumerated in the buyer's agreement, for not obtaining possession.

- xiii. That the project of the respondent had been registered under RERA Act, 2016 and HRERA Rules, 2017. Registration certificate granted by the Haryana Real Estate Regulatory Authority vide memo no. HRERA-142/2017/1712 dated 24.10.2017 has been appended with this reply as annexure R10. Furthermore, the registration has been extended by the hon'ble authority vide certificate dated 02.08.2019. Without admitting or acknowledging in any manner the truth or legality of the allegations levelled by the complainants and without prejudice to the contentions of the respondent, it is respectfully submitted that the complaint preferred by the complainants is devoid of any cause of action. It is submitted that the registration of the project was valid till 31.12.2019 and the respondent had offered possession of the unit in question to the complainants much prior to the aforesaid date. Therefore, no cause of action has accrued in favor of the complainants in the facts and circumstances of the case.
- xiv. That after needlessly delaying the matter, the complainants obtained possession of the unit in question and a unit handover letter dated 17.08.2020 (annexure R12) had been executed by the complainants. It is submitted that prior to execution of the unit handover letter, the complainants had satisfied themselves regarding the measurements, location, dimension, development etc. of the unit in question. The



complainants only after satisfying themselves with all the aspects including shape, size, location etc. of the unit in question, executed the unit handover letter stating that all the liabilities and obligations of respondent as enumerated in the allotment letter/buyer's agreement stood satisfied. Furthermore, the complainants have executed a conveyance deed dated 09.06.2021. Therefore, the transaction between the complainants and the respondent has been concluded in June, 2021 and no right or liability can be asserted by respondent or the complainants against the other. The present complaint is nothing but a gross misuse of process of law.

- xv. That in addition thereto, it is respectfully submitted that the complainants have executed an indemnity cum undertaking dated 27.11.2019 whereby the complainants had declared and acknowledged that they have no ownership right, title or interest in any other part of the project except in the unit area of the unit in question. Moreover, the complainants have admitted their obligation to discharge their HVAT liability thereunder. The complainants have preferred the instant complaint in complete contravention of their earlier representations and documents executed by them. The complainants have filed the instant false and frivolous complaint in order to mount undue pressure upon respondent in order to make it succumb to their unjust and illegitimate demands.
- xvi. That without prejudice to the contentions of the respondent, it is submitted that the allegations of the complainants that possession was to be delivered by March 2015 are wrong, mala fide and result of afterthought in view of the fact that the complainants had made several payments to respondent even after March, 2015. In fact, the

last payment was received from the complainants on 16.11.2019. It is submitted that if there was a delay in delivery of project as alleged by the complainants, then the complainants would not have remitted instalments after March, 2015. The allegations put forth by the complainants qua the respondent are absolutely illogical, irrational and irreconcilable in the facts and circumstances of the case.

xvii. That it is submitted that several allottees, including the complainants, have defaulted in timely remittance of payment of instalments which was an essential, crucial and an indispensable requirement for conceptualisation and development of the project in question. Furthermore, when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially whereas enormous business losses befall upon the respondent. The respondent, despite default of several allottees, has diligently and earnestly pursued the development of the project in question and has constructed the project in question as expeditiously as possible. It is submitted that the construction of the tower in which the unit in question is situated is complete and the respondent has already offered possession of the unit in question to the complainants. Therefore, there is no default or lapse on the part of the respondent and there is no equity in favour of the complainants. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainants are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

xviii. That it is submitted that all the demands that have been raised by the respondent are strictly in accordance with the terms and conditions of the buyer's agreement duly executed and agreed to between the parties. Moreover, once application grant of occupation certificate is submitted by the respondent in the office of concerned statutory authority, the respondent ceases to have any control over the same. The respondent cannot regulate the functioning of the concerned statutory authority. Therefore, no default or lapse can be attributed to the respondent. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainants are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

#### **E. Jurisdiction of the authority**

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.1 Objection regarding exclusion of time taken by the competent authority in processing the application and issuance of occupation certificate.**

16. As far as contention of the respondent with respect to the exclusion of time taken by the competent authority in processing the application and issuance of occupation certificate is concerned, the authority observed that the respondent had applied for grant of occupation certificate on

11.02.2019 and thereafter vide memo no. ZP-692/AD(RA)/2019/25824 dated 17.10.2019, the occupation certificate has been granted by the competent authority under the prevailing law. The authority cannot be a silent spectator to the deficiency in the application submitted by the promoter for issuance of occupancy certificate. It is evident from the occupation certificate dated 17.10.2019 that an incomplete application for grant of OC was applied on 11.02.2019 as fire NOC from the competent authority was granted only on 05.07.2019 which is subsequent to the filing of application for occupation certificate. Also, the Chief Engineer-I, HSVP, Panchkula has submitted his requisite report in respect of the said project on 25.07.2019. The District Town Planner, Gurugram and Senior Town Planner, Gurugram has submitted requisite report about this project on 18.07.2019 and 16.07.2019 respectively. As such, the application submitted on 11.02.2019 was incomplete and an incomplete application is no application in the eyes of law.

17. The application for issuance of occupancy certificate shall be moved in the prescribed forms and accompanied by the documents mentioned in sub-code 4.10.1 of the Haryana Building Code, 2017. As per sub-code 4.10.4 of the said Code, after receipt of application for grant of occupation certificate, the competent authority shall communicate in writing within 60 days, its decision for grant/ refusal of such permission for occupation of the building in Form BR-VII. In the present case, the concerned authority has granted occupation certificate on 17.10.2019. Therefore, in view of the deficiency in

the said application dated 11.02.2019 and aforesaid reasons, no delay in granting occupation certificate can be attributed to the concerned statutory authority.

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

18. The counsel for the respondent submitted that the registration of the project is valid till 31.12.2018 and the respondent has already offered possession of the subject villa in question within the period of registration and therefore no cause of action can be construed to have arisen in favour of the complainants to file a complaint for seeking any interest as alleged. Therefore, next question of determination is whether the respondent is entitled to avail the time given to him by the authority at the time of registering the project under section 3 & 4 of the Act.
19. It is now settled law that the provisions of the Act and the rules are also applicable to ongoing project and the term ongoing project has been defined in rule 2(1)(o) of the rules of 2017. The new as well as the ongoing project are required to be registered under section 3 and section 4 of the Act.
20. Section 4(2)(I)(C) of the Act requires that while applying for registration of the real estate project, the promoter has to file a declaration under section 4(2)(I)(C) of the Act and the same is reproduced as under: -

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

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

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

*— .....*

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

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

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

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

22. The respondent submitted that the complainants have executed the conveyance deed on 09.06.2021 and therefore, the transaction between the complainants and the respondent has been concluded and no right or liability can be asserted by respondent or the complainant against the other. Therefore, the complainants are estopped from claiming any interest in the facts and circumstances of the case. The present complaint is nothing but a gross misuse of process of law.
23. 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 taking over the possession and thereafter execution of the conveyance deed can best be termed as respondent having discharged its liabilities as per the buyer's agreement and upon taking possession, and/or executing conveyance deed, the complainants never gave up their statutory right to seek delayed possession charges as per the provisions of the said Act. Also, the same view has been upheld by the Hon'ble Supreme Court in case titled as *Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd. (now Known as BEGUR OMR Homes Pvt. Ltd.) and Ors. (Civil appeal no. 6239 of 2019)* dated 24.08.2020, the relevant paras are reproduced herein below:

*"34 The developer has not disputed these communications. Though these are four communications issued by the developer, the appellants submitted that they are not isolated aberrations but fit into a pattern. The developer does not state that it was willing to offer the flat purchasers possession of their flats and the right to execute conveyance of the flats while reserving their claim for compensation for delay. On the contrary, the tenor of the communications indicates that while executing the Deeds of Conveyance, the flat buyers were informed that no form of protest*



*or reservation would be acceptable. The flat buyers were essentially presented with an unfair choice of either retaining their right to pursue their claims (in which event they would not get possession or title in the meantime) or to forsake the claims in order to perfect their title to the flats for which they had paid valuable consideration. In this backdrop, the simple question which we need to address is whether a flat buyer who seeks to espouse a claim against the developer for delayed possession can as a consequence of doing so be compelled to defer the right to obtain a conveyance to perfect their title. It would, in our view, be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, the purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance to forsake the right to claim compensation. This basically is a position which the NCDRC has espoused. We cannot countenance that view.*

35. *The flat purchasers invested hard earned money. It is only reasonable to presume that the next logical step is for the purchaser to perfect the title to the premises which have been allotted under the terms of the ABA. But the submission of the developer is that the purchaser forsakes the remedy before the consumer forum by seeking a Deed of Conveyance. To accept such a construction would lead to an absurd consequence of requiring the purchaser either to abandon a just claim as a condition for obtaining the conveyance or to indefinitely delay the execution of the Deed of Conveyance pending protracted consumer litigation."*

24. Therefore, in furtherance of **Varun Gupta V/s Emaar MGF Land Ltd. (supra)** and the law laid down by the hon'ble Apex Court in the Wg. Cdr. **Arifur Rahman (supra)**, this authority holds that even after execution of the conveyance deed, the complainant cannot be precluded from his right to seek delay possession charges from the respondent-promoter.

**G. Findings on the relief sought by the complainants:**

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

**G.1 Delay possession charges**

26. **Relief sought by the complainants:** Direct the respondent to pay delay possession charges for every month of delay from expiry of commitment

period till the actual date of handing over possession to the complainant i.e. 18.02.2019 at the rate prescribed by rule 15 of the Rules, 2017 which is 9.30% p.a. for inordinate delay in delivery of possession of the apartment in terms of clause 14 of the buyer's agreement which is the duty of the respondent under section 11(4) of the Act.

27. In the present complaint, the complainant intends 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."*

28. Clause 10(a) of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

**"10. POSSESSION**

**(a) Time of handing over the possession**

*Subject to terms of this clause and barring force majeure conditions, and subject to the Allottee having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this 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 (Thirty Six) months from the date of start of construction, subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the Company shall be entitled to a grace period of 5 (five) months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project."*

29. 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.

30. **Due date of possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 36 (thirty-six) months from the date of start of construction and further provided in agreement that promoter shall be entitled to a grace period of 5 months for applying and obtaining completion certificate/occupation certificate in respect of said unit. The date of start of construction is 30.11.2012 as per statement of account dated 14.07.2021. The period of 36 months expired on 30.11.2015. As a matter of fact, the promoter has not applied to the concerned authority for obtaining completion certificate/ occupation certificate within the time limit (36 months) prescribed by the promoter in the buyer's agreement. The promoter has moved the application for issuance of occupation certificate only on 11.02.2019 when the period of 36

months has already expired. 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.

31. **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 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.*

32. 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.
33. 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%.

34. **Rate of interest to be paid by the complainants 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;"*

35. 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 complainant in case of delayed possession charges.
36. 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 10(a) of the buyer's agreement executed between the parties on 07.12.2021, the possession of the subject flat was to be delivered within a period of 36 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 130.11.2012. 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 30.11.2015. Occupation certificate was granted by the concerned authority on 17.10.2019 and thereafter, the possession of the subject flat was offered to the complainant on 22.10.2019. 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 flat and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 17.12.2011 to hand over the possession within the stipulated period.

37. 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 17.10.2019. The respondent offered the possession of the unit in question to the complainant only on 22.10.2019 so it can be said that the complainant 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. 30.11.2015 till the expiry of 2 months from the date of offer of possession (22.10.2019) which comes out to be 22.12.2019.

38. 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. 30.11.2015 till expiry of 2 months from the date of offer of possession (22.10.2019) which comes out to be 22.12.2019, as per provisions of section 18(1) of the Act read with rule 15 of the rules.

39. Also, the amount of compensation already paid to the complainant 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.

40. This additional issue raised in complaint no. 4355 of 2021 case titled as **Neera Khuntia and Sonakshi Khuntia vs. Emaar MGF Land Limited.**

**G.II Return Central Green Preferential Location Charges (PLC) that had been wrongly demanded by the respondent. The central green PLC of Rs.6,65,000/- was demanded and got deposited by the respondent by making false representation that one green area labelled as central greens in an eight acres green area that is in front of their unit facing it which is in contradiction of existing facts.**

41. Relevant clause of the buyer's agreement is reproduced below. As per clause 1.2(e)(i) of the buyer's agreement, the following provisions have been made regarding PLC:

**"1.2(d) Preferential Location Charges**

- (i) *The proportionate amount of the preferential location charges ('PLC') for certain units in the Project which inter alia would be charged for Central lawn at the rate of RS.350/- sq. ft. golf zone at the rate of RS.350/- green blot at the rate of RS.150 sq. ft., Connor unit for Rs.100/- sq. ft. ground floor, PLC for RS.---/- pent house PLC at the rate 10% of BSP, First floor PLC at the Rate Rs.150 Sq. Ft., Second Floor PLC Rs.100/- sq. ft. and third*

*floor PLC RS.50sq. ft. and if the Allottee opts for any such Unit, the PLC for the same shall be included in the Total Consideration payable by the Allottee as set out in clause 1.2(a)(i) above for the said Unit.*

- (ii) *The Allottee understands that if due to change in layout plan, the location of any Unit, whether preferentially located or otherwise is changed to any other preferential location, where the PLC are higher than the rate as mentioned hereinabove, then in such a case the Allottee shall be liable to pay the PLC as per the revised PLC decided by the Company within thirty (30) days of any such communication received by the Allottee in this regard. However, if due to the change in the layout plan the Unit ceases to be preferentially located, then in such an event the Company shall be liable to refund only the amount of PLC paid by the Allottee without any interest and/or compensation and/or damages and/or costs of any nature whatsoever and such refund shall be adjusted in the following instalment for the Unit."*

The authority is of view that the matter regarding PLC for central greens of this project has already been decided in **Cr. No. 921 of 2021**, accordingly, in the same terms complainants are liable to pay PLC charges.

**G.III Direct the respondent to not to charge anything outside the clauses mentioned in the agreement.**

42. The respondent shall not charge anything from the complainants, which is not the part of the agreement, however, holding charges shall not be charged by the promoter at any point of time even after being part of agreement as per law settled by hon'ble Supreme Court in civil appeal no. 3864-3899/2020 decided on 14.12.2020.

**G.IV Direct the respondent to pay a sum of Rs. 2,00,000/- as towards litigation cost.**

43. Hon'ble Supreme Court of India, in case titled as **M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021)**, has held that an allottee is entitled for claiming compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the



quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. Therefore, the complainant is advised to approach the adjudicating officer for seeking compensation. Therefore, the complainant is at liberty to approach the adjudicating officer for seeking compensation.

#### H. Directions of the authority


44. 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):

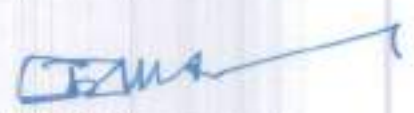
- i. The respondent is directed to pay the interest at the prescribed rate i.e. 10% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 30.11.2015 till 22.12.2019 i.e. expiry of 2 months from the date of offer of possession (22.10.2019). The arrears 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 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 10<sup>th</sup> 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.
45. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
46. 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.~~
47. 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