

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

Date of decision: 08.09.2022

Name of the Builder		Emaar MGF Land Limited	
Project Name		Imperial Garden	
S.no	Complaint No.	Complaint title	Attendance
1.	CR/516/2022	Ravi Chandra and Deep Shikha V/s Emaar MGF Land Limited	Shri Rishab Jain Shri Harshit Batra
2.	CR/454/2022	Amit Mohan Saklani and Vidhi Ghildyal V/s Emaar MGF Land Limited	Shri Rishab Jain Shri Harshit Batra
3.	CR/4731/2021	Deepak Joshi V/s Emaar MGF Land Limited	Shri Nilotpal Shyam Shri Dhruv Rohatgi
4.	CR/4733/2021	Sunil Kumar & Shweta Kumari V/s Emaar MGF Land Limited	Shri Nilotpal Shyam Shri Harshit Batra
5.	CR/5201/2021	Gaurav Relan V/s Emaar MGF Land Limited	Shri Gaurav Relan Shri Dhruv Rohatgi

CORAM:

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

ORDER

1. This order shall dispose of all the 5 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, **Imperial Garden** (group housing colony) 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, assumed liability, execute conveyance deed, and the compensation.
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: Imperial Garden, Sector-102, Gurugram
Possession clause in S. No. 1 and 2: Clause 7(a)
7. POSSESSION AND SALE DEED
<i>(a) Within 60 (sixty) days from the date of issuance of Occupation Certificate by the concerned Authorities, the Company shall offer the possession of the unit to the Allottee. Subject to Force Majeure and fulfillment by the Allottee of all the terms and conditions of this Agreement including but not limited to timely payment by the Allottee of the Total Price payable in accordance with Payment Plan Annexure-III, along with stamp duty, registration and incidental charges and other charges in connection thereto due and payable by the Allottee and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company shall offer the possession of the Unit to the Allottee on or before 31-12-2018.</i>
<i>(Emphasis supplied)</i>
Possession clause in S. No. 3 to 5: clause 14(a)
14. POSSESSION

(a) Time of handing over the Possession

Subject to terms of this clause and barring force majeure conditions, 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 42 (Forty Two) 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 3 (three) months after the expiry of said period of 42 months, for applying and obtaining the completion certificate/ occupation certificate in respect of the Unit and/or the Project.**

Occupation certificate: -

(Emphasis supplied)

OC received on 17.10.2019 for towers/block- A1, A2, C4 and C3, and EWS Block.

Sr. No.	Complaint No./title/ date of filing of complaint	Reply Status	Unit No. and Area Admeasuring	Date of execution of Builder Buyer's agreement	Due date of possession	Total Consideration Total Amount paid by the complainant(s)	Relief Sought
1.	CR/516/2022 Ravi Chandra and Deep Shikha V/s Emaar MGF Land Limited Date of filing of complaint 21.02.2022	Reply Received on 04.05.2022	IG-03-0901, 9 th floor, building no. 03 2025 sq. ft. (super area) 1255.73 sq. ft. (carpet area) [annexure R4, page 68 of reply]	24.05.2018 [annexure R4, page 60 of reply]	31.12.2018 (As per mentioned in the possession clause)	TC: - Rs. 1,21,10,662/- AP - Rs. 1,23,34,662 /- (As per statement of account dated 31.01.2022 at page 126 of complaint)	1. DPC 2. To pay Assumed Liability to the complainant till 31.03.2019 the as per tripartite agreement dated 17.04.2018 3. To refund the car parking amount 4. Compensation
2.	CR/454/2022 Amit Mohan Saklani and Vidhi Ghildyal V/s Emaar MGF	Reply received on 05.05.2022	IG-03-0501, 5 th floor, building no. 03 [annexure R4, page 67 of reply]	19.06.2018 [annexure R4, page 67 of reply]	31.12.2018 (As per mentioned in the possession clause)	TC: - Rs. 1,17,18,752/- AP - Rs. 1,17,18,753 /-	1. DPC 2. To pay Assumed Liability to the complainant till 31.03.2019 the as per

Land Limited	Date of filing of complaint	Super area 2025 sq. ft.				(As per statement of account dated 29.01.2022 at page 116 of complaint)	tripartite agreement dated 17.04.2018
3.	CR/4731/2-021 Deepak Joshi V/s Emaar MGF Land Limited Date of filing of complaint 21.02.2022	Reply received on 22.02.2022	IG-01-0704, 7 th floor building no. 01 Super area 2025 sq. ft. [annexure R4, page 55 of reply]	16.05.2013 [annexure R4, page 52 of reply]	11.05.2017 [calculated from the date of start of construction i.e., 11.11.2013]	TC - Rs. 1,74,95,895/- AP - Rs. 1,75,01,901/- (As per statement of account dated 29.04.2019 at page 77 of complaint)	3- Compensation
4.	CR/4733/2-021 Sunil Kumar & Shweta Kumari V/s Emaar MGF Land Limited Date of filing of complaint 03.12.2021	Reply received on 06.01.2022	IG-09-0602, 6 th floor building no. 09 [annexure P1, page 41 of complaint]	23.05.2013 [page 39 of complaint]	11.05.2017 [calculated from the date of start of construction i.e., 11.11.2013]	TC - Rs. 1,56,26,017/- AP - Rs. 1,56,26,018/- (As per statement of account dated 17.12.2021 at page 197 of reply)	DPC
5.	CR/5201/2-021 Gaurav Reian V/s Emaar MGF Land Limited Date of filing of complaint	Reply received on 24.02.2022	IG-03-1101, 11 th floor building no. 03 Super area 2025 sq. ft. [annexure R3, page	05.10.2018 [annexure R3, page 55 of reply]	31.12.2018 (As per mentioned in the possession clause)	TC - Rs. 1,17,18,661/- (As per statement of account dated 24.10.2019 at page 120 of reply)	To execute the conveyance deed in favour of the complainant

10.01.2022		63 of reply]			AP- Rs.1,16,98,112 /- (As per receipts annexed at page 79-96 of the complaint)
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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, execution of the conveyance deeds and the compensation.
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/ 516/2022 titled as Ravi Chandra and Deep Shikha V/s Emaar MGF Land* are being taken into consideration for determining the rights of the allottee(s) qua delay possession charges, execution of conveyance deeds and others.

A. Project and unit related details

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

CR/ 516/2022 titled as Ravi Chandra and Deep Shikha V/s Emaar MGF Land Limited

Sr. No.	Particulars	Details
1.	Name of the project	Imperial Garden, Sector 102, Gurugram, Haryana
2.	Total area of the project	12 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	107 of 2012 dated 10.10.2012
	Validity of license	09.10.2020
	Licensee	Kamdhenu Projects Pvt. Ltd.
	Area for which license was granted	12 acres
5.	Registered/not registered	Registered in two phases: i. 208 of 2017 dated 15.09.2017 Valid up to 31.12.2018 for 49637 sq. mtrs. and extension granted vide no.3/2019 dated 02.08.2019 which is extended up to 31.12.2019] ii. 14 of 2019 dated 28.03.2019 (Phase II) Valid up to 17.10.2018 for 4.57 acres
6.	Occupation certificate granted on	17.10.2019 [annexure R7, page 149 of reply]
7.	Unit no.	IG-03-0901, 9 th floor, building no. 03 [annexure R4, page 68 of reply]

8.	Area of the unit	2025 sq. ft. (super area) 1255.73 sq. ft. (carpet area)				
9.	Provisional allotment letter dated	04.12.2017 [annexure R3, page 54 of reply]				
10.	Date of execution of buyer's agreement	24.05.2018 [annexure R4, page 60 of reply]				
11.	Possession clause	<p>7. POSSESSION AND SALE DEED</p> <p><i>(a) Within 60 (sixty) days from the date of issuance of Occupation Certificate by the concerned Authorities, the Company shall offer the possession of the unit to the Allottee. Subject to Force Majeure and fulfilment by the Allottee of all the terms and conditions of this Agreement including but not limited to timely payment by the Allottee of the Total Price payable in accordance with Payment Plan Annexure-III, along with stamp duty, registration and incidental charges and other charges in connection thereto due and payable by the Allottee and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company shall offer the possession of the unit to the Allottee on or before 31-12-2018.</i></p> <p>(Emphasis supplied) [annexure R4, page 76 of reply]</p>				
12.	Due date of possession	31.12.2018				
13.	Total consideration	<table border="1"> <tr> <td>As per statement of account dated 31.01.2022 at page 126 of complaint</td> <td>As per payment plan annexed with the buyer's agreement</td> </tr> <tr> <td>Rs. 1,21,10,662/-</td> <td>Rs. 1,20,82,945/-</td> </tr> </table>	As per statement of account dated 31.01.2022 at page 126 of complaint	As per payment plan annexed with the buyer's agreement	Rs. 1,21,10,662/-	Rs. 1,20,82,945/-
As per statement of account dated 31.01.2022 at page 126 of complaint	As per payment plan annexed with the buyer's agreement					
Rs. 1,21,10,662/-	Rs. 1,20,82,945/-					

14.	Total amount paid by the complainants as per statement of account dated 31.01.2022 at page 126 of complaint	Rs.1,23,34,662/-
15.	Offer of possession	24.10.2019 [annexure P7, page 120 of complaint]
16.	Unit handover letter dated	25.01.2020 [annexure P8, page 125 of complaint]
17.	Conveyance deed executed on	27.02.2020 [annexure R13, page 176 of reply]

B. Facts of the complaint

8. The complainants have made the following submissions in the complaint: -
- I. That the respondent published very attractive brochure, highlighting the group housing colony called '**Imperial Gardens**' at Sector - 102, village Kherki Majra Dhankot, District Gurugram, Haryana. The respondent claimed to be one of the best and finest in construction and one of the leading real estate developers of the country, in order to lure prospective customers including the complainants to buy the unit in the project. There are fraudulent representations, incorrect and false statements in the brochure. The complainants invite attention of the haryana real estate regulatory authority, Gurugram to section 12 of the Act, 2016. The project was launched in 2012 with the promise to deliver the possession on time and huge funds were collected over the period by the respondent.

- II. That the complainants were approached by the sale representatives of respondent, who made tall claims about the project '**Imperial Gardens**' as the world class project. The complainants were invited to the sales office and were lavishly entertained, and promises were made to them that the possession of their unit would be handed over in time including that of parking, horticulture, club and other common areas. They were impressed by their oral statements and representations and ultimately lured to pay Rs.7,50,000/- via RTGS no. UTIBR52017100900360432 dated 09.10.2017 as booking amount, to the respondent, Emaar India Limited (formally known as Emaar MGF Land Limited) for booking a unit of the said project.
- III. Thereafter, the respondent company was issued a welcome letter to the complainants on 04.12.2017 for welcoming the complainants to Emaar MGF Family. The respondent also issued a provisional allotment letter to the complainants on 04.12.2017, in which unit no. IG-03-0901 having a super area of 2025 square feet was allotted to the complainants for a total consideration of Rs.1,05,04,080/- excluding maintenance charges and taxes, at imperial gardens, Sector 102, Gurugram.
- IV. The complainants demanded the two parking slots at the podium site in the project while finalising the deal of buying the apartment from the respondent company. The complainants via its email dated 08.01.2018, sent to the respondent, demanded to *"assign the parking space for both parking next to each other in podium (not in multi-level) whenever parking space gets allotted."* The complainants again sent an email on 15.01.2018

to the respondent and mentioned that "I have stated very categorically from the time I saw this property/ paid the initial deposit amount that I would need two parking, so include the price for second parking now. I am not asking to allot the 2 parking as I understand that property is under-construction. But allot the parking at the time of possession in podium. I have been given assurances twice (from Sales - Gaurav and Customer Service - Mamta) that EMAAR will look after my request. Second parking is one of the pre-conditions to buy the property. If EMAAR doesn't give the second parking now/ provide written assurances, as mentioned in this email, then this deal stands closed. I am, as customer, is very clear to have second parking. Now, basis this last email request let me know if second parking can be given, else deal stands closed/ cancelled." afterwards, on 19.01.2018, the complainants received a response via email from Ms Namita Mehta, the representative of the respondent and she clearly stated that "Your expectations and ask is simple and very reasonable; I apologize to you on behalf of my team for the delay in revert. We will address your queries to your full satisfaction." Thus, the respondent/developer committed to provide two podium parking slots to the complainants. But the respondent did not provide the parking slots at the podium and rather at the time of handing over the possession on 25.01.2020 provided the two parking slots, no. 04-046 and 04-047 at the multi-level parking site.

V. The complainants are in dire need of the parking slot at the podium and that is why, the complainants are forced to pay Rs. 2,24,000/- on

27.01.2022 via mail confirmation dated 31.01.2022 for changing one parking slot from multi-level parking site to podium site from No. 04-047 to no. P-104.

- VI. The respondent violated section 13 of the Act, 2016 by taking more than ten per cent (10%) cost of the unit before the execution of the buyer's agreement. The total cost of the unit is Rs.1,05,04,080/- inclusive of EDC, IDC, club membership, IFMS and operational charges/other charges for miscellaneous facilities etc., while the respondent had collected a total sum of Rs.14,54,650/-, around 14% of the total cost of the unit till 25.01.2018.
- VII. That a tripartite agreement was executed between the complainants, the respondent and the housing development finance corporation limited (HDFC) on 17.04.2018 for obtaining a loan amounting Rs. 87,68,000/- towards payment of the sale consideration of residential unit no. IG-03-0901, 9th floor, tower-03, in the project "imperial gardens".
- VIII. That the tripartite agreement dated 17.04.2018 which was signed between the complainants, the respondent and the financial institutions i.e., (HDFC), also stated in clause 4, (refer Page-60 of the complaint) that *"the borrower has informed HDFC of the scheme of arrangement of payment of the purchase consideration of the said unit between the borrower and the developer (the "subvention scheme/period") in terms whereof the developer hereby assumes the liability of payments under the loan agreement as payable by the borrower to HDFC till 31st March 2019 (the period be referred*

to as the "liability period" and the liability be referred to as "assumed liability").

- IX. That the builder buyer agreement was executed between both the parties on 24.05.2018 for purchasing the unit no. IG-03-0901, 9th floor, tower - 03, having a super area of 2025 square feet with the exclusive right to use two car parking spaces, paid for by the allottees and as may be earmarked by the respondent and having a total consideration of Rs.1,05,04,080/- inclusive of EDC and IDC amounting Rs.5,60,925/- and Rs.52,650/- respectively, interest free maintenance security (IFMS) amounting Rs.1,01,250/-, Club Membership amounting Rs.75,000/- and operational charges/other charges for miscellaneous facilities amounting Rs.1,27,575/-, in the said project. The date of handing over the possession of the unit as per clause 7(a), on page no. 18 of the agreement.
- X. That the respondent issued a letter of offer of possession of the said unit to the complainants on 24.10.2019 and further demanded Rs. 32,28,701/- from the complainants for taking possession of the said unit. Thereafter, the respondent issued a unit handover letter to the complainants on 25.01.2020 and handed over the physical possession of the above-mentioned unit. The respondent also allocated an exclusive right to use two car parking spaces 04-046 and 04-047 to the complainants in the said project.
- XI. The total cost of the allotted unit, inclusive of all taxes, cesses, and maintenance charges, is Rs.1,21,10,662/-. The complainants made all

payments timely as and when demanded by them and, in total, paid a sum of Rs.1,23,34,662/- way back till 27.01.2022 i.e., more than 100% (more than hundred per cent) payable amount, as and when demanded by the respondent.

- XII. That the complainants approached the respondent and pleaded for delivery of possession of their unit as per the builder buyer agreement on various occasions. The respondent did not reply to their letters, emails, personal visits, telephone calls, seeking information about the status of the project and delivery of possession of their unit, thereby the respondent violated Section 19 of the Act, 2016.
- XIII. That the complainants hereby seek to redress the various forms of legal omissions and illegal commissions perpetuated by the respondent, which amounts to unfair trade practices, breach of contract and are actionable under the real estate (regulation and development) act, 2016. In the present circumstances, the complainants have been left with no other option but approach and seek justice at the Haryana real estate regulatory authority at Gurugram.

C. Relief sought by the complainants:

9. The complainants have sought following relief(s):
- i. Direct the respondent to pay interest for every month of delay in offering the possession of the unit since 31.12.2018, to the complainants, on the amount taken from the complainants for the sale consideration along with

- additional charges for the unit, at the prescribed rate as per the Act, 2016 till 25.01.2020, the date of physical handing over the possession of the unit.
- ii. Direct the respondent to pay "assumed liability" to the complainants till 31.03.2019 as per the tripartite agreement dated 17.04.2018.
 - iii. Direct the respondent to provide one parking slot at the podium adjacent/near to the already allotted parking slot, No. P-104 at the podium, and also refund/return Rs.2,24,000/- taken from the complainants for the parking slot no. P-104 with interest as prescribed under the Act.
 - iv. Direct the respondent to pay legal expenses of Rs.1,00,000/- incurred by the complainants for filing and pursuing the instant case.

D. Reply by the respondent

10. The respondent has contested the complaint on the following grounds.
 - i. That the complainants/allottees being interested in the real estate development of the respondent for which licence no. 107 of 2012 dated 15.10.2012 for development of a group housing colony was obtained to the respondent by the Director, Town & Country Planning, Govt. of Haryana upon which the respondent devised the development of the project, under the name and style of "imperial garden" situated at Sector 102, Gurugram, Haryana applied for provisional allotment of the unit vide application form and was consequently allotted unit no. IG-03-0901 on ninth floor in building/tower no. 3, having a super area of 2025 sq. ft. vide an allotment letter dated 04.12.2017 and consequently through the buyer's agreement

- dated 24.05.2018. The Project has also been registered vide registration no. 208 of 2017 vide memo no. HRERA/140/2017/1083 and was extended vide extension number 03 of 2019 dated 02.08.2019.
- ii. That according to the clause 7(a) of the buyer's agreement, the delivery of possession of the unit was proposed to be within 60 days from the issuance of OC by the concerned authority subject to force majeure and compliance of all the terms and conditions by the allottees including but not limited to the timely payment of the total price payable in accordance with the payment plan. That clause 7 of the buyer's agreement provides that subject to force majeure conditions and delay caused on account of reasons beyond the control of respondent company, and subject to the allottee not being in default of any of the terms and conditions of the same, the respondent expects to deliver possession of the apartment within the period of 60 days from the date of issuance of the occupation certificate by the competent authority. The occupation certificate was issued by the competent authority on 17.10.2019 and offer of possession was issued on 24.10.2019. Thus, there is no delay on part of the respondent company in delivering of the said unit as alleged by the complainants. Further, clause 7(a) specifically provides that Respondent shall offer possession of the unit to the allottee on or before 31.12.2018 or such time as may be extended by the competent authority. That it is pertinent to mention herein that the buyer's agreement had been executed between the parties on 24.05.2018 whereas there has been a typographical error in clause 7(a)

"the company shall offer possession of the unit on or before 31.12.2018" rather it should have been 31.12.2019. It is submitted that at the time when buyer's agreement was dispatched to the respondents for execution, the project had been registered under the Act up till 31.12.2018. Subsequently, the period of registration was extended by this authority up till 31.12.2019. Thus, it is submitted that the respondent has offered possession of the said unit within the time period as extended by this honourable authority and in any event within a period of 60 days from the date of issuance of the occupation certificate. Thus, there is no default or lapse insofar as the respondent is concerned.

- iii. That the complainants have gravely defaulted in timely remittance of instalments against their unit. As is widely known and understood that the continuous flow of funds is pertinent to the real estate industry, it is submitted that upon the failure of the complainants in making dues as per payment schedule agreed upon, it has the cascading effect on the operations and the cost for proper execution of the project increases exponentially and further causes enormous business losses to the respondent. That upon delay being caused by the complainants on payment of different instalments, they were served with various payment reminders.
- iv. That the delivery of possession was further subject to force majeure circumstances, as noted in clause 7(a). What computes to be force majeure

is noted in the definition clause of the agreement, which is reiterated as under:

"Force majeure event shall include any event beyond the reasonable control of the Company which prevents, impairs or adversely affects the Company's ability to perform its obligation under this Agreement inter-alia including war, flood, drought, fire, cyclone, earthquake or any other natural calamities affecting the development and construction of the Project and 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 beyond the control of the Company and any other such event or circumstance similar or analogous to the foregoing."

- v. That 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 ground water by the High Court of Punjab & Haryana, demonetization etc. and other force majeure circumstances, yet, the respondent completed the construction of the project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the complainants and demanding the prices only as and when the construction was being done.
- vi. Moreover, the respondent was additionally gravely affected due to its dispute with the contractor. It is submitted that the respondent had appointed a contractor operating under the name and style of Capacite Infra projects Ltd. for construction and implementation of the project. The said contractor had assured, represented, warranted, and claimed that it

has the necessary resources, competence, capacity, capability, and expertise for undertaking, performing, effectuating, and completing the work undertaken by it. The respondent had no reason to suspect the *bona fide* of the said contractor at the relevant time and awarded the work to the said contractor. However, the said contractor was not able to meet the agreed timeline for construction of the project. The said contractor failed to deploy adequate manpower, shortage of material, etc. The respondent was constrained to issue several notices, requests etc. to the said contractor to expedite progress of the work at the project site but to no avail.

- vii. That the respondent, despite defaults on part of the complainants, earnestly fulfilled its obligation under the buyer's agreement and completed the project as expeditiously as possible in the facts and circumstances of the case. The default committed by various allottees and due to various factors beyond the control of the respondent are the factors responsible for delayed implementation of the project. The respondent cannot be penalised and held responsible for the default of its customers or due to force majeure circumstances. Thus, it is most respectfully submitted that the present application deserves to be dismissed at the very threshold.
- viii. That the respondent has complied with all of its obligations, not only with respect to the buyer's agreement with the complainants but also as per the concerned laws, rules and regulations thereunder and the local

authorities. That despite innumerable hardships being faced by the respondent, the respondent completed the construction of the project and applied for the occupation application vide an application dated 11.02.2019 before the concerned authority and successfully attained the occupation certificate dated 17.10.2019. It is respectfully submitted that once an application for grant of occupation certificate is submitted to the concerned statutory authority to 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 in any manner whatsoever over the same. There is a delay of around 8 months caused due to the non-issuance of the occupation certificate by the statutory authority while calculating the period of delay. 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.

- ix. That thereafter, only after obtaining the requisite permissions, the respondent legally offered the possession of the unit to the complainant on 24.10.2019. That as per clause 7(a), the respondent promised to offer the possession with 60 days of the grant of OC and as per its promise, the respondent offered the possession of the unit to the complainants within 7 days of grant of OC, hence, this complaint is totally baseless and needs to be dismissed. It is pertinent to mention that vide letter dated 24.10.2019

regarding offer of possession, the complainant was asked to make the requisite payment based on the statement of final dues and complete the documentation required to enable the respondent to initiate the process of handover of unit.

- x. The complainants thereafter executed the indemnity cum undertaking for possession on 13.12.2019 and subsequently, the physical possession of the unit was taken on 25.01.2020. It needs to be categorically noted that the complainants had satisfied themselves with regard to the measurement, location, dimension and development etc of the unit and the complainants had no claim of any nature whatsoever against the company with regard to the size, dimension, area, location and legal status of the unit, and had taken the peaceful possession of the unit, as is evident in the unit handover letter.
- xi. That the complainants availed a loan facility from their bankers HDFC limited and accordingly the tripartite agreement was executed in respect of the unit in question on 17.04.2018. Thus, HDFC Limited is a necessary and proper party to the present complaint. The complainants have failed to implead HDFC as a party to the present complaint. Therefore, the present complaint is liable to be dismissed on account of non-joinder of necessary party.
- xii. That the respondent has invoked the TPA and seeks relief of "assumed liability" bring derived from the clause 4 of the TPA, squarely touching upon the rights of the bank as well. That, however, has miserably failed in

making the bank a party to the same. That, accordingly, the present complaint is liable to be dismissed.

- xiii. Moreover, without accepting the contents of the complaint in any manner whatsoever, the *bonafide* conduct of the respondent has to be highlighted as the respondent. That as per clause 13(c) of the buyer's agreement delay compensation shall only be given to allottees who has not defaulted and/or breached any of the terms of this agreement or who have not defaulted in payment of instalments as per the schedule of the payment incorporated in the agreement. That even though the complainants have defaulted in payment of instalments, the respondent credited an amount of rs. 3,64,510 for maintenance and other benefits on 21.01.2020 and Rs. 5,30,832 as credit memo for subvention on 21.06.2018. This shows the goodwill and bonafide intention of the respondent. Without prejudice to the rights of the respondent, delayed Interest if any has to be calculated only on the amounts deposited by the allottees/complainants towards the basic principle amount of the Unit in question and not on any amount credited by the respondent, or any payment made by the allottees/complainants towards delayed payment charges (DPC) or any taxes/statutory payments etc.
11. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

12. The application of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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, 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;

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 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 complainants at a later stage.

F. Findings on the objections raised by the respondent

F.1 Whether signing of unit hand over letter or indemnity-cum-undertaking at the time of possession extinguishes the right of the allottee to claim delay possession charges.

16. The respondent contended that at the time of taking possession of the subject unit vide unit hand over letter dated 25.01.2020, the complainants have certified itself to be fully satisfied with regard to the measurements, location, direction, developments etc of the unit and also admitted and acknowledge that it do not have any claim of any nature whatsoever against the respondent and that upon acceptance of possession, the liabilities and obligations of the respondent as enumerated in the allotment letter/buyer's agreement, stand fully satisfied. The relevant para of the unit handover letter relied upon reads as under:

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

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

17. In the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.**, the authority has comprehensively dealt with this issue and has held that the aforesaid unit handover letter does not preclude the complainants from

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

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

G. Findings on the reliefs sought by the complainant.

G.1 Direct the respondent to pay interest for every month of delay in offering the possession of the unit since 31.12.2018, to the complainants, on the amount taken from the complainants for the sale consideration along with additional charges for the unit, at the prescribed rate as per the Act, 2016 till 25.01.2020, the date of physical handing over the possession of the unit.

19. In the present complaint, the complainants intend to continue with the project and are 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."

20. As per clause 7(a) of the builder buyer's agreement provides for handing over of possession and is reproduced below:

7. POSSESSION AND SALE DEED

(a) Within 60 (sixty) days from the date of issuance of Occupation Certificate by the concerned Authorities, the Company shall offer the possession of the unit to the Allottee. Subject to Force Majeure and fulfillment by the Allottee of all the terms and conditions of this Agreement including but not limited to timely payment by the Allottee of the Total Price payable in accordance with Payment Plan Annexure-III, along

with stamp duty, registration and incidental charges and other charges in connection thereto due and payable by the Allottee and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company shall offer the possession of the Unit to the Allottee on or before 31-12-2018.

21. The authority has gone through the possession clause and observes that this is a matter very rare in nature where builder has specifically mentioned the date of handing over possession rather than specifying period from some specific happening of an event such as signing of apartment buyer agreement, commencement of construction, approval of building plan etc. This is a welcome step, and the authority appreciates such firm commitment by the promoter regarding handing over of possession but subject to observations of the authority given below.
22. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to providing necessary infrastructure specially road, sewer & water in the sector by the government, but subject to force majeure conditions or any government/regulatory authority's action, inaction or omission and reason beyond the control of the seller. 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 making payment as per the plan may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the agreement to sell by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in

possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

23. Admissibility of delay possession charges at prescribed rate of interest:

Section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

24. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

25. 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%.

26. 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;"*

27. 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.
28. On consideration of the documents available on record and submissions made by both the parties regarding contravention of 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 7(a) of the agreement executed between the parties on 24.05.2018, the possession of the subject apartment was to be delivered within stipulated time i.e., by 31.12.2018. Therefore, the due date of handing over possession is 31.12.2018. Occupation certificate has been received by the respondent on 17.10.2019 and the possession of the subject unit was offered to the complainants on 24.10.2019. 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 allotted unit to the complainants as per the terms and conditions of the apartment

buyer's agreement dated 24.05.2018 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the flat buyer's agreement dated 24.05.2018 to hand over the possession within the stipulated period.

29. Section 19(10) of the Act obligates the allottees 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 complainants only on 24.10.2019, 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 complainant should be given 2 months' time from the date of offer of possession. This 2 month of reasonable time is being given to the complainant 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., 31.12.2018 till the expiry of 2 months from the date of offer of possession (24.10.2019) which comes out to be 24.12.2019.
30. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainants are entitled to delay possession at prescribed rate of interest i.e., 10% p.a. w.e.f. 31.12.2018 till the expiry of 2 months from the date of offer of

possession (24.10.2019) which comes out to be 24.12.2019 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

G. II Direct the respondent to pay "Assumed Liability" to the complainants till 31.03.2019 as per the tripartite agreement dated 17.04.2018.

31. As per agreement dated 17.04.2018 signed between the complainant, respondent and copy endorsed to HDFC wherein the builder has assumed the liability of payment of under the loan agreement as payable to HDFC till 31.03.2019. Keeping in view the provision of agreement, the authority hereby directs the promoter to discharge his liabilities as per agreement.

G.III Direct the respondent to provide one parking slot at the podium adjacent/near to the already allotted parking slot, No. P-104 at the podium, and also refund/return Rs.2,24,000/- taken from the complainants for the parking slot No. P-104 with interest as prescribed under the Act.

32. As per the BBA the promoter was obligated to give two parking spaces (clause 1.1 (a) of the BBA dated 24.05.2018). Our attention was drawn towards a communication at page 45 of the complaint received from the promoter in response to request of the complainant at page 42 to 44 of the complaint. These are correspondence which does not create any obligation on the part of the promoter and same does not find mention in the BBA which was entered subsequently to the correspondences. The promoter is advised to offer a car parking space at Podium if available as a matter of courtesy towards customer.

G. IV. Direct the respondent to pay legal expenses of Rs.1,00,000/- incurred by the complainants for filing and pursuing the instant case.

33. The complainants are seeking relief w.r.t. compensation in the above-mentioned reliefs. Hon'ble Supreme Court of India in *civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.*

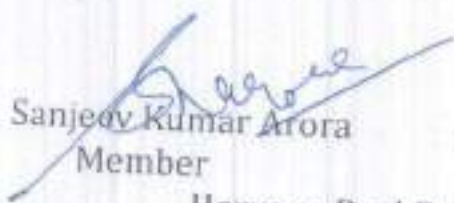
(supra), has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.


H Directions of the authority

34. 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 delayed possession charges as per the proviso of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 at the prescribed rate of interest i.e., 10% p.a. for every month of delay on the amount paid by the complainants to the respondent from the due date of possession i.e., 31.12.2018 till 24.12.2019 i.e. expiry of 2 months from the date of offer of possession (24.10.2019). 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 10th of each succeeding month.
- iii. The respondent is directed to get the conveyance deed executed in favour of the complainants after obtaining occupation certificate to fulfil its obligation conferred upon him under section 11(4)(f) of Act of 2016 and on the other hand, the complainant shall also participate in execution of conveyance deed as per duty conferred upon him under section 19(11) of Act.
- iv. The respondent is directed to fulfil all the contractual obligations conferred upon him vide buyer's agreement and to handover the unit to the complainants /allottee(s) complete in all aspects and as per the specifications agreed upon.
- v. The respondent shall not charge anything from the complainant which is not the part of the flat buyer's agreement.
- vi. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- vii. 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.

35. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
36. 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.~~
37. File be consigned to registry.


Sanjeet Kumar Arora
Member


Ashok Sangwan
Member


Dr. K.K. Khandelwal
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.09.2022

HARERA
GURUGRAM