

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

Date of decision: 08.09.2022

Name of the Builder		Emaar MGF Land Limited	
Project Name		Gurgaon Greens	
S.no.	Complaint No.	Complaint title	Attendance
1.	CR/2774/2021	Siddharth Kher vs. Emaar MGF Land Limited	Shri Mohd. Irshad Shri Dhruv Rohatgi
2.	CR/3934/2021	Parminder Datt & Nidhi Datt vs. Emaar MGF Land Limited	Shri Varun Chugh Shri Dhruv Rohatgi
3.	CR/804/2022	Nisha Sharma and Mahir Sharma vs. Emaar MGF Land Limited	Shri Geetansh Nagpal Shri Harshit Batra
4.	CR/978/2022	Chhandolipi Basu vs. Emaar MGF Land Limited	Shri Varun Chugh Shri Harshit Batra

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, Emerald Floors Premier, Sector-65 (group housing project) being

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 to return PLC charges, car parking charges.

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: Emerald Floors Premier, Sector-65, Gurugram							
Possession clause: Clause 11							
<u>Time of handing over the Possession</u>							
<p><i>Subject to terms of this clause and subject to the allottee(s) having complied with all the terms and conditions of this buyer's agreement, and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 36 months from the date of execution of Buyers Agreement. The Allottee(s) agree and understands that the Company shall be entitled to a grace period of three months, for applying and obtaining the completion certificate/ occupation certificate in respect of the Unit and/ or the Project</i></p>							
Note:							
<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	Complaint no./title/ date of complaint	Reply status	Unit No. and area admeasure- -eing	Date of execution of BBA	Due date of possession	Total sale consideration and amount paid by the Complainant (s)	Relief Sought

1.	CR/2774/2021 case titled as Siddharth Kher vs Emaar MGF Land Limited DOR-02.08.2021	Reply received on 12.10.2021	EFP-B-36-0402, 4th floor, tower no. 36 [annexure C2, page 29 of complaint]	30.12.2010 [annexure C2, page 27 of complaint]	30.12.2013 Offer of possession: 19.11.2020	TSC: Rs. 90,59,609/- AP: Rs. 92,12,575/- [As per statement of account dated 14.09.2021 at page 127-128 of reply]	1. DPC 2. Direct the respondent to withdraw the holding charges and amount re quashed being illegal and unwarranted in the given facts and circumstances.
2.	CR/3934/2021 Case titled as Parminder Datt & Nidhi Datt V/s Emaar MGF Land Ltd. DOR-29.09.2021	Reply received on 19.10.2021	0102, 1st floor, building no. 01 [annexure R2, page 41 of reply]	25.01.2010 [page 18 of complaint]	25.01.2013 Offer of possession: 13.02.2020	TSC: Rs. 81,04,199/- AP: Rs. 81,64,198/- [As per statement of account dated 17.09.2021 at page 56 of complaint]	1. DPC 2. Direct the respondent to return Rs. 250 Lacs charged towards car parking space along with interest. 3. Direct the respondent to return PLC charges of Rs. 3,09,292/- as per provisions of the Act.
3.	CR/804/2022 case titled as Nisha Sharma and Mahir Sharma Vs. Emaar MGF Land Ltd. DOR-04.03.2022	Reply received on 04.05.2022	EFP01-G101, 1st floor, admeasuring 1650 sq. ft. [annexure R3, page 62 of reply]	09.02.2010 [page 55 of reply]	09.02.2013 Offer of possession: 13.02.2020	TSC: Rs. 73,78,289/- AP: Rs. 73,46,844/- As per statement of account dated 30.06.2018 at page 176 of complaint.	1. DPC 2. Direct the respondent set aside the one-sided indemnity bond got signed by the respondent from the complainant under undue influence. 3. Direct the respondent to return the following charges such as GST, Advance maintenance charges, and HVAT through intimation of possession.

4.	CR/978/2022 case titled as Chhandolipi Basu Vs. Emaar MGF Land Ltd. DOR-09.03.2022	Reply received on 01.02.2022	REP-10-0101 floor, [Page 44 of complaint]	22.01.2010 [page 40 of reply]	22.01.2013 Offer of possession 16.01.2020 [annexure R-10, page 160-164 of reply]	TSC: Rs. 72,03,850/- AP: Rs. 26,35,720 [page 213 of reply]As complaint	1. DPC 2. Direct the respondent to pay Rs 50,000/- to the complainant towards the cost of litigation.
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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

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties *inter se* in respect of said unit for not handing over the possession by the due date, seeking award of delayed possession charges, possession and to return PLC charges, car parking charges.
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/2774/2021 Case titled as Siddharth Kher 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

CR/2774/2021 Case titled as Siddharth Kher V/s Emaar MGF Land Ltd.

Sr. No.	Particulars	Details
1.	Name of the project	Emerald Floors Premier at Emerald Estate, Sector 65, Gurugram, Haryana
2.	Unit no.	EFP-II-36-0402, 4 th floor, tower no. 36 [annexure C2, page 29 of complaint]
3.	Provisional allotment letter dated	18.06.2010 [annexure C1, page 23 of reply]
4.	Date of execution of buyer's agreement	30.12.2010 [annexure C2, page 27 of complaint]
5.	Possession clause	<p>11. POSSESSION</p> <p>(a) Time of handing over the Possession</p> <p><i>Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 36 months from the date of execution of Buyers Agreement. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of three months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project</i></p>

		[Emphasis supplied]
6.	Due date of possession	30.12.2013 [Note: Grace period is not included]
7.	Total consideration as per statement of account dated 14.09.2021 at page 127 of reply	Rs. 90,59,609/-
8.	Total amount paid by the complainants as per statement of account dated 14.09.2021 at page 128 of reply	Rs. 92,12,575/-
9.	Occupation certificate	11.11.2020 [annexure R4, page 117 of reply]
10.	Offer of possession	19.11.2020 [annexure R5, page 120 of reply]
11.	Delay compensation already paid by the respondent in terms of the buyer's agreement as per statement of account dated 14.09.2021 at page 127 of reply	Rs. 5,82,608/-

B. Facts of the complaint

8. The complainant has made the following submissions in the complaint:
 - i. That the present complaint is being filed against the respondent for the deficient services which inter alia includes failure to timely offer/deliver possession of residential unit i.e. unit no. EPF-II-36-0402 (hereinafter referred to as the said unit) along with all easements, privileges, rights and benefits attached thereto in the project known as "emerald hills (emerald floors, premier, phase - ii)", situated at sector 65, urban estate, Gurugram, Haryana - 122018. The total sale consideration for the said unit is Rs. 83,32,862/-, and the complainant

has already paid rs.90,59,609/- to the respondent. However, the respondent company delayed the project for more than seven years and thereafter, while offering possession to the complainant vide their letter dated 19.11.2020, illegally and arbitrarily demanded the payment of alleged balance dues from the complainant, besides the respondent in a highly arbitrary manner and in clear contravention of the applicable laws, and the assurances and promises given by the respondent, even failed to account for the compensation for delay in completion of the said project as was assured by the respondent. being aggrieved, the complainant has preferred the present complaint before this authority.

- ii. That the complainant is a serving navy officer, and a law-abiding citizen of India and is resident of B-096 Oakwood estate, Akashneem Marg, Gurugram, Haryana. That the respondent is a company incorporated under the companies act, 1956 and is existing under the companies act, 2013. The respondent company is *inter alia* engaged in the real estate sector. The company claims to have built a solid reputation for quality and a great value for money. Also, claimed to have completed a series of real estate projects in and around the NCR region including Gurugram, over the years.
- iii. That in June, 2010 the respondent through its representatives introduced its project "emerald hills (emerald floors, premier, phase - ii)", situated at sector 65, Urban Estate, Gurugram, Haryana - 122018, to the complainant, thereby representing that the construction in the said project had already commenced and the possession shall be offered to the allottees within a period of 36 months, with a grace period of 3 months, from the date of execution of the apartment buyers.

agreement. The representatives of the respondent company further allured the complainant by showcasing lucrative and world class amenities in the said project.

- iv. That it was the reputation behind the respondent's name and the representations, assurances, and promises made by the respondent's representatives that the said project shall be completed within the committed time period, because of which the complainant agreed to get a unit allotted in his favour in the said project and accordingly submitted an application for the allotment of a unit in the said project. The respondent accepted the said application and issued an allotment letter dated 18.06.2010 whereby the respondent allotted the unit no. epf-ii-36-0402 in the project known as "emerald hills (emerald floors, premier, phase - ii)", situated at sector 65, urban estate, Gurugram, Haryana - 122018, to the complainant. The said allotment letter was followed by a printed and pre drafted apartment buyer agreement, which the complainant was required to execute, and following the respondent's instructions, and again on the premise that the respondent shall complete the project and handover the unit to the complainant within the committed period, the complainant executed the said agreement with the respondent on 30.12.2010.
- v. That in terms of clause 11 (a) of the said apartment buyer agreement dated 30.12.2010, the possession of the aforesaid allotted unit was to be given by the respondent to the complainant in March, 2014, however, contrary to the terms of the said agreement, and the representations and assurances made by the respondent to the complainant, the project was delayed for more than seven years. the complainant under *bona fide* belief and having full faith in the

respondent, and further, since the complainant needed the said unit for his self-use, had patiently waited for the respondent to give the possession of the said unit. The complainant had time and again visited the respondent's office to enquire about the status of the project, and on every occasion, the complainant was assured that the project shall soon be completed, and the unit shall be offered for possession to the complainant in the coming few months. On every such occasion the complainant believed the said assurances, and righteously paid the amounts as were demanded the respondent.

- vi. That with the introduction of RERA, and the project having been inordinately delayed, the respondent assured the complainant that the complainant shall be paid the compensation as per the RERA provisions and rules, when the possession of the unit is offered to the complainant. The complainant even agreed to the said assurance of the respondent. That even till March/April, 2020, in response to the query of the complainant as to when the possession of the unit shall be given to him, the respondent vide its emails dated 04.03.2020, 04.04.2020 and 30.07.2020 had intimated the complainant that the construction is going on, and the possession shall be given to the complainant when the occupation certificate is obtained, and the complainant was once again assured that he shall be compensated for the delay. Again, the complainant had no other option except to wait for the respondent to complete the project and give the possession of the allotted unit to the complainant. That after a delay of more than seven (7) years in completion of the said project, the respondent vide its letter dated 19.11.2020, offered the possession of the said allotted unit to the complainant, and raised a demand for the alleged balance dues.

vii. That the complainant after having gone through the said letter, to his utter shock and dismay, found that the respondent had failed to account for the compensation as was promised to be paid by the respondent to the complainant and unilaterally taken the compensation amount as per the agreement, and adjusted the said amount from the alleged balance dues. That in the given circumstances, the complainant met the respondent's representatives personally and also had written to the respondent on several occasions including on 05.12.2020, 09.12.2020, 14.12.2020 and 21.12.2020, and demanded the compensation as per the prevailing laws, and in fact a meeting was also held between the respondent's representatives and the complainant on 28.01.2021 at the respondent's office, whereby the complainant reminded the respondent of the respondent's commitment to the complainant for payment of delayed possession compensation @10.40% per annum on the amount paid with effect from the committed date of delivery of possession till actual offer of possession. The respondent was thus requested to revise the possession letter, and issue the fresh possession letter after paying the compensation amount to the complainant as above stated. That the respondent had assured the complainant that they shall pay the above said compensation amount, and thereafter the complainant can take the possession of the allotted unit and get the sale deed executed in his favour. On the said premise, the respondent even influenced the complainant to pay the maintenance charges for one year in advance for the said complex, even though the respondent was yet to compensate the complainant for the delayed period, and also to give the possession of the said unit to the complainant and execute the sale

deed for the said unit in his favour. The complainant paid an amount of Rs.90,59,609/- to the respondent against the said allotted unit.

- viii. That the aforesaid assurances and representations made by the respondent proved to be of no avail and the respondent failed to give to the complainant any revised possession letter and the compensation amount. In the said circumstances, the complainant vide legal notice dated 20.02.2021 called upon the respondent company to compensate the complainant by paying interest @ 10.40% per annum on the consideration amount for the said unit as retained by the respondent beyond the committed period of possession i.e. rs.60,45,779/- and to handover the possession of the said unit to the complainant and to execute the sale documents in favour of the complainant. That the respondent company duly received the said legal notice dated 20.02.2021 and vide its reply dated 04.03.2021, stating therein all the false averments and raising baseless contentions, disputed and denied the lawful claims of the complainant. It is further submitted that despite the failure to offer the possession of the unit in a liveable condition, and without paying the compensation for delay, the respondent has gone a step ahead, and has started levying unwarranted and illegal holding charges on the complainant. The complainant denies his liability to pay any such holding charges, and the said alleged demands are required to be quashed and withdrawn by the respondent.
- ix. That the complainant has again requested the respondent to make the unit in liveable condition, and to withdraw the holding charges. The complainant has further requested the respondent to pay the compensation, and interest and to transfer the completed unit in

favour of the complainant, and the respondent has not acceded to the requested requests of the complainant, and the complainant is continuing to suffer due to the high handedness, arrogance, and illegalities of the respondent as stated above. That under the aforesaid circumstances, the complainant is left with no alternative but to file the present complaint against the respondent company inter alia seeking relief of possession of the unit allotted to the complainant vide apartment buyer agreement dated 30.12.2010 along with the interest and compensation for the delay in offering of the possession, within a reasonable time, as directed by this authority. That the real estate (regulation and development) act, 2016 came into force on 01.05.2016 and under the said act, the developers/builders have become liable to pay interest and compensation to the complainant/allottee in case of delay in handing over the possession.

- x. That without prejudice to the aforesaid, the complainant is also entitled to claim compensation from the respondent company for the delayed possession. It is pertinent to bring it to attention of this authority that the terms and conditions appended under the apartment buyer agreement were unfair, unjust and arbitrary inasmuch as the respondent company had drawn all the important provisions in their favour. The complainant was denied fair scope of compensation under the apartment buyer agreement in case of delay of possession. That the complainant did object to the unilateral provisions of the terms and conditions of the apartment buyer agreement, but the said objection was not considered by the respondent company. The Indian parliament has enacted and enforced the real estate (regulation and development) act, 2016 to balance the bargaining power of the allottees who have

been disadvantaged by the abuse of dominant position by the developers since several years. The abuse of the dominant position by the builder has been such that the government was constrained to pass the above Act.

C. Relief sought by the complainant:

9. The complainant has sought following relief(s):
 - (i) Direct the respondent to handover the physical possession of the subject unit along with all easements, privileges, rights and benefits attached thereto in the said project.
 - (ii) Direct the respondent execute registered sale deed in favour of the complainant pertaining to the unit bearing no. EPF-II-36-0402 along with all easements, privileges, rights and benefits attached thereto in the said project.
 - (iii) Direct the respondent to pay interest/compensation for the delayed period in handing possession of the said unit in terms of the Act at the rate which this authority deems fit and proper in the interest of justice.
 - (iv) Direct the respondent to withdraw the holding charges and should be quashed being illegal and unwarranted in the given facts and circumstances.
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 present complaint pertains to the alleged delay in delivery of possession for which the Complainant has filed the present complaint, before the authority, Haryana Real Estate Regulatory Authority,

Gurugram, Haryana (hereinafter referred to as the Authority), inter-alia seeking possession of the unit in question as well as delayed interest towards delay in handing over the property. Pursuant to the filing of the present complaint, the respondent received a notice from this hon'ble authority. the present reply is being filed by the respondent herewith, however, now, in terms of the Haryana real estate (regulation & development) amendment rules, 2019 (hereinafter referred to as the "said amendment rules") complaints are to be filed as per amended form CRA in terms of the amended rule 28. it may be mentioned that the said complaint is not filed as per the prescribed amended CRA form.

- ii. That the complainant vide application form dated 16.05.2010 applied to the respondent for provisional allotment of the unit in the project 'Emerald Floors Premier Phase-II' in Emerald Estate at Sector-65, Urban Estate, Gurgaon, Haryana (hereinafter referred to as "the project"). The said booking application contained detailed terms and conditions and was subject to unit buyers' agreement (hereinafter referred to as "agreement") to be executed later. Pursuant thereto, the complainant was allotted a unit bearing no. EFP-II-36-0402, in the project vide provisional allotment letter dated 18.06.2010. Vide the said letter, the construction linked installment payment plan opted by the complainant was also enclosed.
- iii. Subsequently, buyers agreement dated 30.12.2010 ('agreement') was executed between the complainant and the respondent. That the respondent on receipt of the occupation certificate, offered possession of the said unit to the complainants vide offer of possession letter dated 19.11.2020 subject to making payments and submission of necessary

documents. However, till date the complainant has failed to comply with the requirements as detailed in the offer of possession notice and take possession of the said unit. It is submitted that the complainant has already been given compensation of Rs. 5,82,608/- towards the delayed possession. The complainant has further been given benefit of EPR, adjustment of CAM amounts etc., yet the complainant is not coming forward to take the physical possession of his unit solely with malafide to extort more and more money from the respondent.

- iv. That without prejudice, after the enforcement of the Act, each developer was required to register its project if the same was an "ongoing project" and give the date of completion of the said ongoing project in terms of Section 4(2)(1)(c) of the Act. Accordingly, the respondent had duly registered the said project, in which the said unit in question is situated having registration no. 104 of 2017 dated 24.8.2017. That the registration of the project is valid till 23.08.2022 and the respondent has already offered possession of the unit in question within the period of registration and therefore no cause of action can be construed to have arisen in favour of the complainant to file a complaint for seeking any interest as alleged more so when compensation payable under the buyer's agreement (hereinafter referred to as "agreement") has already been credited to the complainant by the respondent.
- v. That the terms and conditions set out in the agreement clearly provided compensation to be paid in the event of delay in handing over of the possession and the complainant after having understood the clauses had executed the agreement and therefore, the relief being claimed by the complainants did not take into account the contractual

position and as such the relief claimed is not maintainable before the authority. The complainant is needlessly avoiding the conclusion of the transaction with the intent of evading the consequences as enumerated in the buyer's agreement for delay in obtaining of possession on the part of the respective allottee. Therefore, there is no equity in favour of the complainant, the complainant never had any intention of purchasing the unit in question for his own use, the complainant is not an "aggrieved person" under the act but an investor who has purchased the said unit in question as an investment to be further sold in order to earn profit.

- vi. That the complaint is also liable to be dismissed for the reason that for the unit in question, the agreement was executed on 30.12.2010, i.e. prior to coming into effect of the act and the rules, as such, the terms and conditions of the agreement executed prior to the applicability of the act and the rules, would prevail and shall be binding between the parties. In view thereof, the authority has no jurisdiction to entertain the present complaint as the complainant has no cause of action to file the present complaint under the act/rules. It is settled law that the Act and Rules are not retrospective in nature. Therefore, the application of the sections/rules of the Act/Rules relating to interest /compensation, cannot be made retrospectively. As such, the Complainant is not entitled to any relief whatsoever.
- vii. That the complainant does not deserve any relief whatsoever. The present complaint merits outright dismissal, with costs and strictures against the complainant. It is submitted that the basis of the present complaint is that there is a delay in delivery of possession of the unit in question, and therefore, interest has been claimed for the same. It is

further submitted that the agreement itself envisages the scenario of delay and the compensation thereof, in terms of clause 11(a) thereof, the respondent proposed to offer possession of the unit in question within 36 months from the date of execution of the agreement with 3 months grace period, the said clause only prescribes an estimated time period for handing over of possession. The time period mentioned therein is neither cast in stone nor fixed. It is only a tentative estimate provided by the respondent. More importantly, the same was subject to not only force majeure, but primarily on "compliance" of clauses of the agreement by the complainant with a 3 months grace period thereon, for applying and obtaining completion/ occupation certificate in respect of the unit and/or the project. It was further provided that in the agreement that the time period for delivery shall extended on the occurrence of delay for reasons beyond the control of the company. more importantly, the same was subject to not only force majeure, but also on "timely payment" of all instalments by the allottees. Further, an amount of rs.5,82,608/- has already been adjusted against the final demand raised by the respondent at the time of offer of possession. Therefore, the alleged claims are an afterthought and devoid of any merit.

- viii. That the project got delayed on account of various reasons which were/are beyond the power and control of the respondent and hence, the respondent cannot be held responsible for the same. *Firstly*, there were defaults on the part of the contractor (M/s BL Kashyap and sons). *Secondly*, the national building code (NBC) was revised in the year 2016 and in terms of the same, all high-rise buildings (i.e., buildings having height of 15 mtrs. and above), irrespective of the area of each

floor, are now required to have two staircases. Furthermore, it was notified vide gazette published on 15.03.2017 that the provisions of NBC 2016 supersede those of NBC, 2005. The respondent had accordingly sent representations to various authorities identifying the problems in constructing a second staircase. Eventually, so as to not cause any further delay in the project and so as to avoid jeopardising the safety of the occupants of the buildings in question, the respondent had taken a decision to go ahead and construct the second staircase. It is expected that the construction of the second staircase will be completed in a years' time. Thereafter, upon issuance of the occupation certificate and subject to the force majeure conditions, possession of the unit has been offered to the complainants.

- ix. That several allottees have defaulted in timely remittance of payment of installments which was an essential, crucial and an indispensable requirement for conceptualization 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. Therefore, there is no default or lapse on the part of the respondent and there is no equity in favour of the complainant. 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 jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act.**

16. The respondent contended that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The respondent further submitted that the provisions of the Act are not retrospective in nature and the provisions of the Act cannot undo or modify the terms of buyer's agreement duly executed prior to coming into effect of the Act.
17. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of

the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of *Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)* which provides as under:

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

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

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

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

rate of compensation mentioned in the agreement for sale is liable to be ignored."

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

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

20. The counsel for the respondent submitted that the registration of the project is valid till 23.08.2022 and the respondent has already offered possession of the subject unit 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.
21. 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.

22. 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..."

23. 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)(I)(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..."

G. Findings on the relief sought by the complainant:

24. 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."

25. Clause 11 of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

11. POSSESSION

(a) Time of handing over the possession

*Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the Unit within **36 months from the date of execution of Buyer's Agreement**. The Allottee(s) agrees and understands that the Company shall be entitled to a **grace period of three months, for applying and obtaining the completion***

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

26. 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.
27. **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) from the date of execution of buyer's agreement and further provided in agreement that promoter shall be entitled to a grace period of 3 months for applying and obtaining completion certificate/occupation certificate in respect of said unit. The period of 36 months expired on 30.12.2013. 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 21.07.2020 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.

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

The complainant is 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.

29. 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.
30. Consequently, as per website of the State Bank of India i.e., <https://sbil.com>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 01/07/2020

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

31. **Rate of interest to be paid by the complainant in case of delay in making payments-** The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

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

Explanation. —For the purpose of this clause—

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

32. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., _____ by the respondent/ promoter which is the same as is being granted to the complainant in case of delayed possession charges.
33. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 11 of the buyer's agreement executed between the parties on 30.12.2010, 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. 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 30.12.2013. Occupation certificate was granted by the concerned authority on 11.11.2020 and thereafter, the possession of the subject unit was offered to the complainant on 19.11.2020. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 30.12.2010 to hand over the possession within the stipulated period.

34. 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 11.11.2020. The respondent offered the possession of the unit in question to the complainant only on 19.11.2020 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. 30.12.2013 till the expiry of 2 months from the date of offer



of possession (19.11.2020) which comes out to be 19.01.2021. 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 as per section 2(za) of the Act. The respondent is directed to get the conveyance deed executed within a period of three months from the date of this order. Also, the respondent is directed not to place any condition or ask the complainant to sign an indemnity of any nature whatsoever, which is prejudicial to the rights of the complainant as has been decided by the authority in complaint bearing no. **4031 of 2019 titled as Varun Gupta V. Emaar MGF Land Ltd.**

35. 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. 30.12.2013 till expiry of 2 months from the date of offer of possession (19.11.2020) which comes out to be 19.01.2021 as per provisions of section 18(1) of the Act read with rule 15 of the rules.
36. 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.
37. **Issue regarding holding charges:-** The authority has decided this in the complaint bearing no. **4031 of 2019 titled as Varun Gupta V/s Emaar MGF Land Ltd.** wherein the authority has held that the respondent is not entitled to claim holding charges from the complainant/allottee 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.

38. Therefore, in light of the above, the respondent shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed.

G.II Return Rs 2.50 Lacs charged towards car parking space along with interest.

39. This additional issue raised in complaint no. 3934 of 2021 case titled as **Parminder Datt and anr. vs. Emaar MGF Land Limited.**
40. **Relief sought by the complainant:** Direct the respondent to return Rs.2.50 Lacs charged towards car parking space along with interest.

The authority has decided this issue in the complaint bearing no. *4031 of 2019* titled as *Varun Gupta V/s Emaar MGF Land Ltd.* wherein the authority has held that open parking spaces cannot be sold/charged by the promoter both before and after coming into force of the Act. However as far as issue regarding covered car parking is concerned where the said agreements have been entered into before coming into force the Act, the matter is to be dealt with as per the provisions of the builder buyer's agreement subject to that the allotted parking area is not included in super area.

41. In the present complaint, the respondent has charged Rs.2,50,000/- towards covered car park as per clause 1.2(a) and 1.3 and the same are reproduced below:

1.2 Sale Price for Sale of Unit

(a) Sale Price

(i) The sale price of the Unit ("Total Consideration") payable by the Allottee(s) to the Company includes the basic sale price ("Basic Sale

Price/BSP") of Rs. 59,69,345.24/- cost towards covered car park of Rs. 2,50,000/-, External Development Charges ("EDC") of Rs.240/- per sq.ft., Infrastructure Development Charges ("IDC") of Rs. 30/- per sq.ft. and applicable PLC of Rs. 8,35,772.02/-, if any, and Club Membership charges of Rs. 75,000/-. In the event, the allottee(s) opts for additional car parking space, subject to the availability, the open car park shall be made available at an additional sum of Rs. 1,75,000/-, which shall be added to the Total Consideration, at the time of raising of the demand notice for payment as per Schedule of Payment. Save as aforesaid, the Allottee(s) understands that the Total Consideration does not include any other charges, as reserved in this Buyer's Agreement and the Allottee(s) shall be under an obligation to pay such additional cost as may be intimated to him by the Company, from time to time. The Allottee(s) specifically understands that time is the essence with respect to the Allottee(s)' obligations and undertakes to make all payments in time, without any reminders from the Company through A/c Payee Cheques(s)/Demand Draft(s) payable at New Delhi. The Allottee(s) agrees that the payments on due dates as set out in Annexure- 3 shall be made promptly and the Company shall not be required to send any notice or demand for payment as per the Schedule of Payment.

1.3 Parking Space

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

In the instant matter, the subject unit was allotted to the complainants vide allotment letter dated 05.12.2009 and as per the said allotment letter, the respondent had charged a sum of Rs.2,50,000/- on account of car parking charges. As per clause 1.2(a)(i) and Annexure 3 of the buyer's agreement 25.01.2010, the allottee had agreed to pay the parking charges for covered car parking. The cost of parking of Rs.2,50,000/- has been charged exclusive

to the basic price of the unit as per the terms of the agreement. The cost of parking of Rs.2,50,000/- has already been included in the total sale consideration and the same is charged as per the buyer's agreement. Accordingly, the promoter is justified in charging the same.

G.III Direct the respondent to return PLC charges of Rs. 3,09,292/- as per provisions of the Act.

42. The counsel for the complainant submitted that the respondent has charged Rs. 3,09,292/- as PLC for 'open space' on account of open space being in front of the units. However, subsequently, the respondent has constructed a club in front of the units and now there is no open space left, for which PLC has been charged by the respondent. On the contrary, the counsel for the respondent submitted that the respondent has developed the project as per the approved plans and drawings, which were seen by the complainants before purchasing the unit in question.
43. The club building has been constructed as per the approved drawings by the competent authority. If there is any deviation from the approved layout plan, the complainant may approach the adjudicating officer for compensation.

G.IV Direct the respondent set aside the one-sided indemnity bond get signed by the respondent from the complainant under undue influence.

44. This additional issue raised in complaint no. 804 of 2022 case titled as **Nisha Sharma and Mahir Sharma vs. Emaar MGF Land Limited.**
45. **Relief sought by the complainant:-** Direct the respondent set aside the one-sided indemnity bond get signed by the respondent from the complainant under undue influence.

The respondent is directed not to place any condition or ask the complainants to sign an indemnity of any nature whatsoever, which is

prejudicial to the rights of the complainants as has been decided by the authority in complaint bearing no. *4031 of 2019 titled as Varun Gupta V. Emaar MGF Land Ltd.*

G.V Direct the respondent to return the following charges such as GST, Advance maintenance charges, and HVAT through intimation of possession.

46. Advance maintenance charges

The authority has decided this issue in the complaint bearing no. *4031 of 2019* titled as *Varun Gupta V/s Emaar MGF Land Ltd.* wherein the authority has held that the respondent is right in demanding advance maintenance charges at the rates' prescribed in the builder buyer's agreement at the time of offer of possession. However, the respondent shall not demand the advance maintenance charges for more than one year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.

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

• HVAT

The authority has decided this in the complaint bearing no. *4031 of 2019* titled as *Varun Gupta V/s Emaar MGF Land Ltd.* wherein the authority has held that the promoter is entitled to charge VAT from the allottee for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT). However, the promoter cannot charge any VAT from the

allottees/prospective buyers for the period 01.04.2014 to 30.06.2017 as the same was to be borne by the promoter-developer only. The respondent-promoter is bound to adjust the said amount, if charged from the allottee with the dues payable by them or refund the amount if no dues are payable by them.

- **GST**

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

In the present complaint, the possession of the subject unit was required to be delivered by 09.02.2013 and the incidence of GST came into operation thereafter on 01.07.2017. So, the complainant cannot be burdened to discharge a liability which had accrued solely due to respondents' own fault in delivering timely possession of the subject unit. So, the respondent/promoter is not entitled to charge GST from the complainant/allottee as the liability of GST had not become due up to the due date of possession as per the said agreement. So, the respondent/promoter is not entitled to charge GST from the complainant/allottee as the liability of GST had not become due up to the due date of possession as per the said agreement as has been held by **Haryana Real Estate Appellate Tribunal, Chandigarh in appeal bearing no. 21 of 2019 titled as M/s Pivotal Infrastructure Pvt. Ltd. Vs. Prakash Chand Arohi.** Also, the authority concurs on this issue and holds that the

difference between Post-GST and Pre-GST shall be borne by the promoter. The promoter is entitled to charge from the allottee the applicable combined rate of VAT and service tax fixed by the government.


H. Directions of the authority

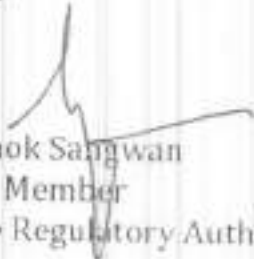
47. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):


- 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 complainant from due date of possession i.e. 30.12.2013 till 19.01.2021 i.e. expiry of 2 months from the date of offer of possession (19.11.2020). The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per rule 16(2) of the rules.
- ii. The respondent 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. **Advanced maintenance charges:-** Keeping in view the facts above, the authority deems fit that the respondent is right in demanding advance maintenance charges at the rate prescribed therein at the time of offer of possession in view of the judgement (supra). However, the respondent shall not demand the advance maintenance charges for more than one (1) year from the allottee.

- iv. The respondent cannot charge any HVAT from the allottees/prospective buyers for the period 01.04.2014 to 30.06.2017 as the same was to be borne by the promoter-developer only. Therefore, the respondent shall not demand the same and the lien so marked be removed. Information about the same be also sent to the concerned bank by the promoter as well as complainants along with copy of this order.
 - v. The respondent/promoter is not entitled to charge GST from the complainants/allottees as the liability of GST had not become due up to the due date of possession as per the said agreement.
 - vi. The respondent shall not levy/recover any charges 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.
 - vii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - viii. The rate of interest chargeable from the complainants/allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 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.
48. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

49. Complaint stands disposed of. True certified copy of this order shall be placed in the case file of each matter.
50. 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