



Complaint no. 4750 of 2021 and 4233 of 2021

**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/4750/2021	Rahul Jayprakash and Shakuntla Jayprakash vs. Emaar MGF Land Limited	Shri Abhay Jain Shri Harshit Batra
2.	CR/4233/2021	Emaar MGF Land Limited vs. Rahul Jayprakash and Shakuntla Jayprakash	Shri Harshit Batra Shri Abhay Jain

CORAM:

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

ORDER

1. This order shall dispose of both the 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. That the complaint bearing no. **4233/2021** has been filed by the promoter in 'Form CRA' on 25.10.2021 against the allottees seeking a direction from the authority against the allottees to take the possession of the subject unit and payment of the outstanding dues along with interest as per section 19 of the Act of 2016. Since in the matter bearing no. 4233/2021, no reply has been filed by the allottees, upon the request of the counsel for allottees, the authority hereby considers the complaint no. **4750/2021** as the reply of the said complaint.
3. Since common question of facts are involved in the above-mentioned complaints and vide order dated 01.02.2022, the complaint no. 4233/2021 was tagged with the matter bearing no. 4750 of 2021, accordingly the same are being disposed of by this single order.

A. Project and unit related details

4. That the particulars of the project, the details of the sale consideration, the amount paid by the complainants/allottees, the date of proposed handing over the possession, delay period, if any are being given in the tabular form.

Sr. No.	Particulars	Details
1.	Name of the project	Gurgaon Greens, Sector 102, Gurugram, Haryana
2.	Total area of the project	13.531 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no.	75 of 2012 dated 31.07.2012



Complaint no. 4750 of 2021 and 4233 of 2021

	Validity of license	30.07.2020
	Licensee	Kamdhenu Projects Pvt. Ltd. & Anr.
5.	HRERA registered/ not registered	Registered vide no. 36(a) of 2017 dated 05.12.2017 for 95829.92 sq. mtrs.
	HRERA registration valid up to	31.12.2018
	HRERA extension of registration vide	01 of 2019 dated 02.08.2019
	Extension valid up to	31.12.2019
6.	Occupation certificate granted on	30.05.2019 [annexure R5, page 126 of reply]
7.	Provisional allotment letter dated	23.11.2018 [annexure R2, page 48 of reply]
8.	Unit no.	GGN-11-0902, 9 th floor, building no. 11 [annexure P1, page 41 of complaint]
9.	Unit measuring	1650 sq. ft. (super area) 1022.58 sq. ft. (carpet area)
10.	Date of execution of buyer's agreement	24.12.2018 [annexure P1, page 33 of complaint]
11.	Possession clause	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</i>



Complaint no. 4750 of 2021 and 4233 of 2021

		<p><i>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 or such time as may be extended by the competent authority.</i></p> <p>(Emphasis supplied)</p> <p>[annexure P1, page 49 of complaint]</p>	
12.	Due date of possession	31.12.2018	
13.	Total consideration	As per statement of account dated 25.01.2022 at page 192 of reply	As per payment plan annexed with the buyer's agreement
		Rs.1,12,07,764/-	Rs.1,11,79,114/-
14.	Total amount paid by the complainants as per statement of account dated 25.01.2022 at page 192 of reply	Rs.1,07,79,812/-	
15.	Offer of possession	01.06.2019 [annexure R6, page 129 of reply]	
16.	Keys handover letter dated	05.07.2019 [page 95 and 96 of complaint]	

B. Facts of the complaint

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

- i. The grievances of the complainants relate to breach of contract, false promises, gross unfair trade practices and deficiencies in the services committed by the respondent in regard to the unit no.GGN-11-0902, located on 9th floor, tower/building no.11 having a super area of 1650 square feet in Sector - 102, village Dhankot, District Gurugram, Haryana, purchased by the complainants paying their hard-earned money. The complainants have paid the complete payments to the respondent, as and when demanded by the respondent. Total sale consideration of the unit inclusive of EDC, IDC, interest free maintenance security (IFMS) and operational charges/other charges for miscellaneous facilities etc. have been paid. The respondent has not paid the delay possession charges to the complainants since 31st December 2018, the actual legal date of possession till 5th July 2019, the date of handing over the physical possession of the unit.
- ii. In the builder buyer agreement (hereinafter referred to as "agreement"), it is stated that the respondent has entered into collaboration agreements with the wholly owned subsidiaries of the respondent, namely Kamdhenu projects private limited and Divit Estates private limited, who are owners of a piece and parcel of the land admeasuring 13.531 acres situated at sector - 102,



village Dhankot, District Gurugram, for the development of the scheduled land and market and sell the units in the scheduled land. The director, town and country planning, Haryana, Chandigarh (DTCP) vide licence bearing no.75 of 2012 dated 31st July, 2012 had granted permission for setting up a group housing colony to be known as 'Gurgaon Greens'.

- iii. That based on the licence, the respondent collected a huge amount from gullible and naïve buyers including the complainants from 2018 to 2021 and promised the complainants to hand over the possession of the unit latest by 31st December 2018 as per the builder buyer agreement but the complainants have received the physical possession of the unit on 5th July 2019. The complainants, in total, paid a sum of Rs.1,07,79,812/- way back till 21st April 2021, as and when demanded by the respondent. Delayed possession charges have not been paid to the complainants by the respondent.
- iv. The respondent initially enticed various customers including the complainants to pay their hard-earned money for the purchase of the unit in the project. The complainants, in total, paid a sum of Rs.1,07,79,812/- way back till 21st April 2021, as and when demanded by the respondent. The respondent has not paid the delay possession charges to the complainants. The respondent published very attractive brochure, highlighting the group housing colony called 'Gurgaon Greens' at Sector - 102, village 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 honourable chairman 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.

- v. That the complainants were approached by the sale representatives of respondent, who made tall claims about the project 'Gurgaon Greens' 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. The complainants were impressed by their oral statements and representations and ultimately lured to pay a total of rs.1,00,000/- as booking amount, to the respondent, Emaar India limited (formally known as Emaar MGF Land Limited) in three payments, that is, Rs. 60,000/- and Rs. 25,000/- on 5th November, 2018 and Rs.15,000/- on 8th November, 2018 for booking a unit in its group housing colony known as "Gurgaon Greens" situated at Sector 102. The builder buyer agreement was executed between the complainants and the respondent on 24th



December, 2018 for purchasing the unit no. GGN-11-0902, located on 9th floor, tower/building no.11 having a super area of 1650 square feet with the exclusive right to use the one car parking space as may be earmarked by the respondent, in the group housing colony "Gurgaon Greens" for a total consideration of Rs. 1,00,39,000/- inclusive of EDC and IDC amounting Rs. 5,65,026/-, interest free maintenance security (IFMS) amounting Rs. 25,000/- and operational charges/other charges for miscellaneous facilities amounting Rs.1,03,950/-.

- vi. That the date of handing over the possession of the unit as per clause 7(a), on page no.18 of the builder buyer agreement is mentioned as 31st December 2018. The respondent issued a letter of offer of possession of unit no.GGN-11-0902 situated at "Gurgaon Greens" on 1st June, 2019 to the complainants and further demanded final dues of Rs.16,46,332/- from the complainants for taking possession of the said unit. The complainants were forced to sign the undertaking dated 4th June 2019, which was prepared and drafted by the respondent before handing over the possession of the unit no. GGN-11-0902 to the complainants. The respondent issued home orientation form, detail of keys handover to client, inventory report for electrical points and inventory report for plumbing, all dated 5th July 2019 to the complainants and handed over the physical possession of the unit no. ggn-11-0902 situated at "Gurgaon Greens". The total cost of the unit including taxes and cesses, as mentioned in the

statement of accounts dated 24th November 2021, comes out to be Rs.1,12,07,764/- out of which, the complainants paid, in total, paid a sum of rs.1,07,79,812/- way back till 21st April 2021, as and when demanded by the respondent.

viii. 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. The respondent has not paid the delay possession charges to the complainants since 31st December 2018, the actual legal date of possession till 5th July 2019, the date of handing over the physical possession of the unit.

ix. That the respondent is responsible and accountable to the terms and conditions prescribed in the builder buyer agreement. The respondent is bound to pay the interest on the deposited amount to the complainants if there is a delay in handing over the possession of the unit. The respondent has, in an unfair manner, siphoned off funds meant for the project and utilised same for its own benefit for no cost. The respondent being builder, promoter, colonizer and developer, whenever in need of funds from bankers or investors ordinarily has to pay a heavy interest per annum. However, in the present scenario, the respondent utilised funds



collected from the complainants and other buyers for its own good in other projects, being developed by the respondent.

- x. That in the given premise and circumstances, it is submitted that the respondent is habitual of making false promises and has deceptive behaviour. The respondent has earned enough monies by duping the innocent complainants and other such buyers through unfair trade practices and deficiencies in services and has caused the complainants enough pain, mental torture, agony, harassment, stress, anxiety, financial loss and injury. 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 options but approach and seek justice at the haryana real estate regulatory authority at Gurugram, Haryana.

C. Relief sought by the complainants:

5. 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 31st December 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 the handing over the physical possession i.e., 5th July 2019.

- (ii) Direct the respondent to pay legal expenses of Rs.1,00,000/- incurred by the complainants for filing and pursuing the instant case.
6. 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

7. The respondent has contested the complaint on the following grounds.
- i. That the complainants have not approached the court with clean hands as have nowhere divulged the hon'ble authority with the fact that they have been in constant defaults in making good on their part of the obligations. That the complainants are willful and persistent defaulters in making the payments and have willfully concealed that fact thereof. That the complainants have been enjoying the enjoying the possession of the unit for over 2.5 years now without having undergone their obligations of making the require payments and executing the conveyance deed. The complainants fail to disclose the fact a complaint has already been filed against them by the respondent (complaint no. 4233 of 2021 dated 18.10.2021 filed on 25.10.2021) *sub judice* before the hon. authority with respect to similar contentions of payment of pending payments and of execution of conveyance deed. The in lieu of pendency of the complaint no. 4233 of 2021, the present complaint is not maintainable and is liable to be dismissed.



- ii. That it needs to be categorically noted that the complainants have failed in giving reply in the complaint no. 4233 of 2021 and have instead filed the present complaint to harass the respondent. That approaching this forum with half cooked and manipulated stories is a grave violation of the doctrine of clean hands and hence, this complaint is liable to be dismissed on this ground alone. That in light of such facts, the present complaint is liable to be dismissed with costs in favour of the respondent.
- iii. That the complainant is not an "allottee" but an investor who has booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale. The apartment in question has been booked by the complainant as a speculative investment and not for the purpose of self-use as his residence. therefore, there is no equity in favour of the complainant.
- iv. That the complainants being interested in the real estate development of the respondent under the name and style of "Gurgaon greens" situated at sector 102, Gurugram, Haryana ("**project**") tentatively applied for provisional allotment of the unit vide application form, and were consequently allotted unit no. GGN-11-0902 on 9th floor in building/tower no. 11, having carpet area of 1022.58 sq. ft and super area of 1650 sq. ft. ("**unit**") vide a provisional allotment letter dated 23.11.2018. The Project is duly registered with the Haryana RERA vide memo no. HRERA-139/2017/2294 dated 05.12.2017 and has been extended till 31.12.2019. That thereafter, a buyer's agreement dated



24.12.2018 (hereinafter referred to as the “**agreement**”) was executed between the complainants and the respondent for the unit for the sale price of Rs.1,00,39,500 which comes to be Rs.1,12,07,764 with IBMS/IFMS and GST charges.

- v. That as per clause 7(a) of the agreement, possession of the unit was to be given within 60 days from the date of issuance of occupation certificate. It needs to be noted that the date of offer of possession could further be extended as may be done by competent authority, *force majeure* conditions, and default in payments by the allottee, as is evident from clauses 7(a), 7(c) and 7(j) of the agreement. That under the section 19(6) of the act and as under the agreement, it was the obligation of the complainants to make the payments timely, without any delay. It was categorically agreed that time is the essence, as per clause 12(a) of the agreement and that the allottee would be in the event of default in case non-payment of the monies against the unit.

“Clause 12. **TIME IS THE ESSENCE**

(a) *It is specifically and categorically understood and agreed by the Allottee that time is of essence with respect to the Allottee(s)' obligations to perform or observe all the obligations of the Allottee under this Agreement and/or to pay the Total Price along with other payments such as applicable stamp duty, registration fee and other charges stipulated in this Agreement to be paid on or before due date or as and when demanded by the Company as the case may be.....'*

“Clause 16. **EVENTS OF DEFAULTS AND CONSEQUENCES**

...

(c) *The Allottee shall be considered under a condition of default, in the following events:*

- (i) *Allottee fails to pay the total price, or part thereof, within the time as stipulated in the Payment Plan or does not meet the demand(s) of the Company in terms of this Agreement.*

- (v) *Failure to pay any taxes and other charges including stamp duty, legal charges, registration charges, any incidental charges etc. in terms of this Agreement;*
- vi. That the complainant's default of making timely payments after payment request letters, a number of reminders were served to the complainants by the respondent even when the same was not an obligation of the respondent as per clause 12(b) of the agreement. It is pertinent to mention that it was categorically provided in clause 7(j) that in case of any default/delay by the allottees in payment as per schedule of payment incorporated in the agreement, the date of handing over of possession shall be extended accordingly, solely on the respondent's discretion till the payment of all outstanding amounts to the satisfaction of the respondent. Since, the complainants have defaulted in timely remittance of payments as per schedule of payment the date of delivery of possession is not liable to be determined in the manner sought to be done by the complainants. Clause 7(j) is being reproduced herein:

"That the Allottee(s) agrees and accepts that in case of any default /delay in payment as per the Schedule of Payments, the date of handing over of the possession shall be extended accordingly till the payment of all outstanding amounts to the satisfaction of the Company."

It is submitted that the complainants have defaulted in timely remittance of the instalments and hence the date of delivery of possession of the unit in question is not liable to be determined in the manner sought to be done by the complainant. The

complainants are conscious and aware of the said agreement and have filed the present complaint to harass the respondent and compel the respondent to surrender to their illegal demands. It is submitted that the filing of the present complaint is nothing but an abuse of the process of law.

That furthermore, 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. That all these circumstances come within the purview of the clause 7(c) and automatically extend the due date for delivery of possession.

- vii. 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 the innumerable hardships being faced by the respondent, the respondent completed the construction of the project and applied for part occupation certificate vide an application dated



Complaint no. 4750 of 2021 and 4233 of 2021

31.12.2018 before the concerned authority and successfully attained the occupation certificate dated 30.05.2019. It is to be noted that the construction of all the booked apartments has been completed, out of which more than 500 units have been handed over till date. That thereafter, and only after obtaining the requisite permissions, the respondent legally offered the possession of the unit to the complainants on 01.06.2019. Subsequently, the complainants took the physical possession of the unit and have been enjoying the same, till date.

- viii. That before taking physical possession of the unit on 05.07.2019, as evident from the home-orientation form dated 05.07.2019, the complainants executed, and undertaking dated 04.06.2019 whereby they categorically agreed to take the possession of the unit only for the limited purpose of carrying out fit-outs. The complainants undertook to further complete the possession formalities and execute the conveyance deed. That since then, the complainants have failed in fulfilling the possession formalities and executing the conveyance deed. That in not making the payments despite multiple requests of the respondent, the complainants are also liable to pay the interest as per section 19(7) of the act. That the complainants stand in default of Rs. 11,10,516/- a bifurcation of which is mentioned below:

S. No	Particular	Amount (INR)
1.	Net Amount Payable	4,27,952
2.	Stamp Duty	5,60,760

Complaint no. 4750 of 2021 and 4233 of 2021

3.	E-Challan	50,000
4.	Administrative and Registration Charges	23,000
5.	CAM outstanding	11,504
6.	Delay payment Charges as on 25.01.2022	37,300
Total Amount as on 25.01.2022		11,10,516

- ix. That the respondent has time and again requested the complainants to make the requisite payments via email, as is evident from e-mail dated 24.06.2021. That it was the obligation of the complainants to complete the possession formalities and execute the conveyance deed as per section 19(11) of the act and clause 7(g) of the agreement. Non execution of the conveyance deed has made the complainants liable under clause 16(c)(iii) of the agreement, which is reiterated as under:

16(c)(iii). Failure to execute the Conveyance Deed, Maintenance Agreement and any other document required to be executed by the Company, within such timelines as stipulated by the Company and in terms of the Agreement.

- x. 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 has credited an amount of Rs.10,23,483 on 12.04.2019 towards subvention and Rs.1,50,000 on 02.03.2021 towards compensation of offer of possession and various credit memos for TDS certificates and GST rebate. 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. That in light of the *bona fide* conduct of the respondent, pendency of the complaint no. 4233 of 2021, compensation taken by the complainants at the time of offer of possession, non-existence of cause of action, non-maintenance of the present complaint and the frivolous complaint filed by the complainants, this complaint is bound to be dismissed with costs in favour of the respondent.

E. Jurisdiction of the authority

8. 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

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning

area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject-matter jurisdiction

10. 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.

11. 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 entitlement of DPC on ground of complainant being investor



12. The respondent submitted that the complainants are investor and not consumer/allottee, thus, the complainants are not entitled to the protection of the Act and thus, the present complaint is not maintainable.
13. The authority observes that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims and objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that under section 31 of the Act, any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement, it is revealed that the complainants are an allottees/buyers and they have paid total price of Rs. 1,07,79,812/- to the promoter towards purchase of the said unit in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:
- "2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*
14. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between



respondent and complainants, it is crystal clear that the complainants are allottee as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the complainant-allottee being investors is not entitled to protection of this Act stands rejected.

G. Findings on the relief sought by the complainants:

G. I Delay possession charges

23. In the present complaint, the complainants intend to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

24. Clause 7(a) of the buyer's agreement provides for time period 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 or such time as may be extended by the competent authority.

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

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

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

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



26. 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.
27. 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%.
28. **Rate of interest to be paid by the complainants in case of delay in making payments-** The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:
- "(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
- Explanation. —For the purpose of this clause—*
- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*
29. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10% by the respondent/

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

30. 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 7(a) of the buyer's agreement executed between the parties on 24.12.2018, the possession of the subject flat was to be delivered on or before 31.12.2018. Therefore, the due date of handing over possession comes out to be 31.12.2018. Occupation certificate was granted by the concerned authority on 30.05.2019 and thereafter, the possession of the subject flat was offered to the complainant on 01.06.2019. Therefore, the authority allows DPC as per proviso to section 18(1) of the Act read with rule 15 of the rules w.e.f. the due date of handing over possession as per the buyer's agreement i.e., 31.12.2018 till the date of handing over of possession i.e., 05.07.2019. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject flat and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 24.12.2018 to hand over the possession within the stipulated period.
31. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the



respondent is established. As such the complainants are entitled to delayed possession at prescribed rate of interest i.e. 10% p.a. w.e.f. 31.12.2018 till the date of handing over of possession i.e., 05.07.2019 as per provisions of section 18(1) of the Act read with rule 15 of the rules. Also, the amount of compensation already paid to the complainants by the respondent as delay compensation in terms of the buyer's agreement shall be adjusted towards delay possession charges payable by the promoter at the prescribed rate of interest to be paid by the respondent as per the proviso to section 18(1) of the Act.

32. The respondent has following counterclaim against the allottees:

H. Direct the allottee to pay the outstanding dues along with interest at the prescribed rate and to execute the conveyance deed in respect of the allotted unit.

33. The respondent submitted that the complainants/allottees have failed to abide by the terms of buyer's agreement by not making the payments in timely manner as per the payment plan opted by them and by not taking the possession of the unit in question as per the terms and conditions of the buyer's agreement. Further cause of action also arose when despite repeated follow-ups by the respondent, the complainants/allottees withheld to perform their contractual obligation. The respondent further submitted that the complainants/allottees are required to make the requisite payment as per the provision of section 19(6) of the Act and as per section 19(7) of the Act to pay the interest at such rate as may be prescribed for any delay in payments towards any amount or charges to be paid under section

19(6) of the Act. Relevant clauses 12 and 16 of the buyer's agreement are reproduced as under:

Clause 12. TIME IS THE ESSENCE

(a) It is specifically and categorically understood and agreed by the Allottee that time is of essence with respect to the Allottee(s)' obligations to perform or observe all the obligations of the Allottee under this Agreement and/or to pay the Total Price along with other payments such as applicable stamp duty, registration fee and other charges stipulated in this Agreement to be paid on or before due date or as and when demanded by the Company as the case may be.

Clause 16. EVENTS OF DEFAULTS AND CONSEQUENCES

...

(c) The Allottee shall be considered under a condition of default, in the following events:

(i) Allottee fails to pay the total price, or part thereof, within the time as stipulated in the Payment Plan or does not meet the demand(s) of the Company in terms of this Agreement;

(iii) Failure to execute the Conveyance Deed, Maintenance Agreement and any other document required to be executed by the Company, within such timelines as stipulated by the Company, within such timelines as stipulated by the Company and in terms of the Agreement.

(v) Failure to pay any taxes and other charges including stamp duty, legal charges, registration charges, any incidental charges etc. in terms of this Agreement;..."

Upon the complainant's default of making timely payments as per the payment plans opted by the complainants, several reminders dated

13.02.2019, 28.02.2019, 26.03.2018, 04.04.2019, 20.04.2019 and 15.04.2021 were served to the complainants for making requisite payments. However, the complainants have failed to remit the instalments in timely manner as per the payment schedule opted by them. The rate of interest chargeable from the allottees by the promoter, in default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. 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%. Therefore, interest on the delay payments from the allottee shall be charged at the prescribed rate i.e. 10% by promoter.

34. In view of the above, the complainants/allottees shall make the requisite payments of outstanding dues along with interest and shall participate towards registration of the conveyance deed of subject unit as per the provisions of sections 19(6), (7), (10) and section 19(11) of the Act, within a period of 2 months from the date of this order failing which the respondent/promoter shall be free to proceed with cancellation of the subject unit allotted to the complainants/allottees as per the terms of the buyer's agreement and Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018.

I. Directions of the authority

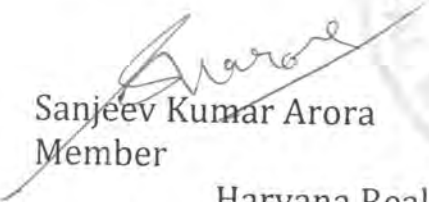
35. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

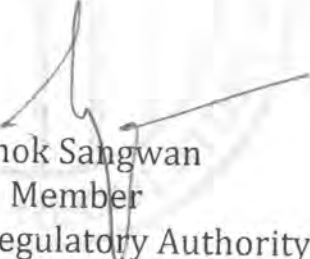
- i. The respondent is directed to pay the interest at the prescribed rate i.e. 10% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 31.12.2018 till the date of handing over of possession i.e., 05.07.2019. The arrears of interest accrued so far 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 complainants/allottees shall make the requisite payments of outstanding dues along with interest and shall participate towards registration of the conveyance deed of subject unit as per the provisions of sections 19(6), (7), (10) and section 19(11) of the Act, within a period of 2 months from the date of this order failing which the respondent/promoter shall be free to proceed with cancellation of the subject unit allotted to the complainants/allottees as per the terms of the buyer's agreement and Haryana Real Estate Regulatory

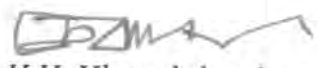
Complaint no. 4750 of 2021 and 4233 of 2021

Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018.

- iv. 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.
36. A copy of this order be placed on the connected case file bearing no. CR/4233/2021.
37. Both the complaints stand disposed of.
38. 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