

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

Complaint no: 3869 of 2021
Date of decision: 17.08.2022

1. Ramkesh Jangra
 2. Mrs. Geeta Devi
- Address:** - Residents of C-3-1101, The Legend
Sector-57, Gurugram

Complainants

Versus

1. Emaar MGF Land Limited
Address: Emaar MFG Business Park,
M.G. Road, Sector 28, Sikandarpur Chowk,
Gurugram, Haryana.
2. M/s logical Developers Pvt. Limited,
3. M/s Kamdhenu Projects Pvt. Limited
4. M/s Sarvodya Buildcon Private Limited
5. M/s Hope Promoters Pvt. Limited,
6. M/s Sidhi Vinayak Buildcon Pvt. Limited,
7. M/s Maestro Estates Private Limited,
Address: At 306-308, Square one,
District Centre, Saket -110017

Respondents

CORAM:

Dr. K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Shri Ishwar Singh Sangwan
Shri Dhruv Rohatgi

Advocate for the complainants
Advocates for the respondent

ORDER

1. The present complaint dated 24.09.2021 has been filed by the complainants/allottees in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules,



2017 (in short, 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 obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter se them.

A. Project and unit related details

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

Sr. No.	Particulars	Details
1.	Name of the project	Palm Gardens, Sector 83, Gurugram, Haryana
2.	Unit no.	PGN-01-0505, 5 th floor, tower 01 [page 24 of complaint]
3.	Area of unit	1900 sq. ft.
4.	Provisional allotment letter dated	09.01.2012 [page 60 of complaint]
5.	Date of execution of buyer's agreement	07.02.2012 [page 22 of complaint]
6.	Possession clause	10. POSSESSION (a) Time of handing over the Possession <i>Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement,</i>



		<p><i>and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 36 (Thirty Six) months from the date of start of construction, subject to timely compliance of the provisions of the Buyer's Agreement by the Allottee. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of 3 (three) months, for applying and obtaining the completion certificate/ occupation certificate in respect of the Unit and/or the Project.</i></p> <p>(Emphasis supplied)</p>
7.	Date of start of construction as per the statement of account dated 25.09.2021 at page 155 of reply	09.08.2012
8.	Due date of possession	09.08.2015 [Note: Grace period is not allowed]
9.	Complainants are subsequent allottees	The respondent acknowledged the complainants as allottees vide nomination letter dated 08.06.2018 (page 59 of complaint) in pursuance of agreement to sell dated 08.03.2018 (annexure R5, page 94 of reply) executed between the complainants and the original allottee (Aditya Bhargava)

10.	Total consideration as per the statement of account dated 25.09.2021 at page 155 of reply	Rs.1,06,91,062/-
11.	Total amount paid by the complainants as per the statement of account dated 25.09.2021 at page 155 of reply	Rs.1,07,18,767/-
12.	Occupation certificate	17.10.2019 [annexure R13, page 118 of reply]
13.	Offer of possession	24.10.2019 [annexure R16, page 124 of reply]
14.	Unit handover letter dated	27.12.2019 [annexure R17, page 129 of reply]
15.	Conveyance deed executed on	10.01.2020 [annexure R18, page 131 of reply]

B. Facts of the complaint

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

- i. That initially a residential apartment No. PGN-01-0505 in the project Palm Garden, Sector-83, Gurugram was booked on 09.01.2012 by Mr. Aditya Bhargav, subsequently an endorsement was made in favour of the complainants in the records of respondents. That the complainants had purchased the above said apartment no. PGN-01-0505, measuring 176.52 sq. mtr. (1900 sq.ft.) in tower no. 1, Palm Garden for a total sale consideration of Rs. 93,40,200/-. That the respondents

- should have delivered the possession on or before 07.05.2015 as per buyer's agreement clause no.10(a).
- ii. That the respondents delivered the possession of the said apartment after a long delay of 04 years i.e., 24.12.2019 to the complainants. That the respondents have executed the conveyance deed of the above said apartment vide vasika no. 8525 dated 10.01.2020 in favour of the complainants. That when the complainants shifted and started residing in the above said apartment, the complainants came to know that there is huge irregularities and deficiencies and number of facilities is not available, for which the respondents are liable to provide the same in the compliance of builder's buyers agreement and license no.108 dated 18.12.2020 granted by the government.
- iii. That in the above said project, there is no direct connectivity of road to residents as well as complainants by which lot of problems are faced as they are using the revenue rasta of Village, for which the respondents have violated the license and occupation conditions. Moreover, it is pertinent to mention here that how respondent got occupation certificate without proper road connectivity. Apart from this in builder buyers' agreement green area is shown which belongs to farmers, by which the respondents have cheated and committed fraud with the innocent buyers including complainants. The respondents have failed miserably basic amenities such as water, electricity, sewerage, sewerage treatment plant, firefighting arrangement, road etc., which is

gross violation of license granted by the DTCP, how the occupation certificate and other clearances obtained by the respondents, which is a matter of investigation.

- iv. That the actions of the respondent are violative of the principles of natural justice and the services rendered are deficient, malafide, unfair, unjust and illegal as have been shown in the preceding paragraphs. The said practices are against the tenants of ethical business and are liable to be severely deprecated by this authority. That the respondent has caused monetary losses to the complainants and has denied them the right to enjoy the property for which they have already paid amount. Even more damaging, they have caused immense mental agony, confusion, insecurity and pain to the complainants.

C. Relief sought by the complainants

4. The complainants have filed the present compliant for seeking following relief:
- i. Direct the respondent to pay delayed possession charges to the complainants for delay in handing over possession.
 - ii. Direct the respondent to provide road connectivity facility.
 - iii. Direct the respondent to comply with the terms and conditions of the licenses by providing water, electricity, sewerage treatment plant, fire-fighting arrangement, road, rainwater harvesting system.
 - iv. Direct the respondent to provide the patch which is still owned by farmers whereas the same was shown in layout plan as the part of the project in the buyer's agreement.



v. Direct the respondent to pay compensation as the complainants resided in rented accommodation by Rs. 35,000/- per month for a period of 4 years which comes to Rs. 16,80,000/- and litigation cost of Rs.2,00,000/-.

5. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act and to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has raised certain preliminary objections and has contested the present complaint on the following grounds:

- i. That the present complaint is not maintainable in law or on facts. The present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint can only be adjudicated by the civil court. The present complaint deserves to be dismissed on this ground alone.
- ii. That the complainant is estopped by his own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. 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. That the so-called cause of action as per the version of the complainant arose prior to the Act coming into force. The challenge to selective provisions of the buyer's agreement is also barred by

limitation. The complaint is liable to be dismissed on this ground alone. That the complainant has not come before this hon'ble authority with clean hands and have suppressed vital and material facts from this hon'ble authority. The correct facts are set out in the succeeding paras of the present reply.

- iii. That Mr. Aditya Bhargava (hereinafter "original allottee") had booked the unit in question, bearing number PGN-01-0505, situated in the project developed by the respondent, known as "Palm Gardens," at sector 83, village Kherki Daula, Gurugram. That thereafter the original allottee vide application form applied to the respondent for provisional allotment of a unit bearing number PGN-01-0505 in the project. It is submitted that the original allottee prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the original allottee was fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondent to undertake development of the same, that the original allottee took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondent. The original allottee consciously and willfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that the original allottee shall remit every instalment on time as per the payment schedule. The respondent had no reason to suspect bonafide of the original allottee. That the respondent issued the provisional allotment letter dated 09.01.2012 to the original allottee.

- iv. That it needs to be highlighted that the original allottee was not forthcoming with the outstanding amounts as per the schedule of payments. The respondent was constrained to issue payment letters and reminders to the original allottee. The respondent had categorically notified the original allottee that he had defaulted in remittance of the amounts due and payable by him. It was further conveyed by the respondent to the original allottee that in the event of failure to remit the amounts mentioned in the said notice, the respondent would be constrained to cancel the provisional allotment of the unit in question.
- v. That subsequently, the respondent sent the buyer's agreement to the original allottee, which was executed between the parties on 07.02.2012. It is pertinent to mention that the buyer's agreement was consciously and voluntarily executed by the original allottee after reading and understanding the contents thereof to their full satisfaction. It is submitted that the rights and obligations of the original allottee and now the complainant, as well as respondent are completely and entirely determined by the covenants incorporated in the buyer's agreement which continue to be binding upon the parties thereto with full force and effect. Clause 10(a) of the buyer's agreement provides that subject to the allottee having complied with all the terms and conditions of the agreement, and not being in default of the same, possession of the apartment would be handed over within 36 months from the date of start of construction. It has further been specified in the same clause that the respondent will be entitled to a grace period of 3 months. Clause 10 (b) provides that the time period for delivery of

possession shall stand extended on the occurrence of delay for reasons beyond the control of the respondent. In terms of clause 10(b)(iv) in the event of default in payment of amounts demanded by the respondent as per the schedule of payment under the buyer's agreement, the time for delivery of possession shall also stand extended.

- vi. That it is pertinent to mention that clause 12(c) of the buyer's agreement provides that compensation for any delay in delivery of possession shall only be given to such allottees who are not in default of their obligations envisaged under the agreement and who have not defaulted in payment of instalments as per the payment plan incorporated in the agreement. Therefore, the complainants as well as the original allottees, being defaulters, are not entitled to any compensation from the respondent. That thereafter the original allottee executed an agreement to sell dated 08.03.2018 in favour of the complainants for transferring and conveying rights, entitlement and title of the original allottee in the unit in question to the complainants.
- vii. It was further declared by complainants that having been substituted in the place of the original allottees, they were not entitled to any compensation for delay, if any, in delivery of possession of the unit in question or any rebate under a scheme or otherwise or any other discount, by whatever name called, from the respondent. Similarly, the original allottee had also executed an affidavit and indemnity cum undertaking on the same lines. Further, the respondent issued the nomination letter dated 8.10.2012 in favour of the complainants. Furthermore, the

respondent, at the time of endorsement of the unit in question in their favour, had specifically indicated to complainants that the original allottee had defaulted in timely remittance of the instalments pertaining to the unit in question and therefore, have disentitled himself for any compensation/interest. The respondent had conveyed to complainants that on account of the defaults of the original allottee, complainants would not be entitled to any compensation for delay, if any. The said position was duly accepted and acknowledged by complainants. The complainants are conscious and aware of the fact that they are not entitled to any right or claim against respondent. The complainants have intentionally distorted the real and true facts and has filed the present complaint in order to harass the respondent and mount undue pressure upon it. It is submitted that the filing of the present complaint is nothing but an abuse of the process of law.

- viii. That in the manner as aforesaid, the complainants stepped into the shoes of the original allottee. The complainants have duly taken the possession of the unit in question. The conveyance deed in respect of the unit in question has also been executed. That it is pertinent to mention that after execution of the unit handover letter and obtaining of possession of the unit in question after the execution of the conveyance deed, the complainant is left with no right, entitlement or claim against the respondent. The transaction between the complainant and the respondent stands concluded and no right or liability can be asserted by the respondent or the complainant against the other. The instant complaint is a gross misuse of process of law. Therefore, no cause of action has accrued

in favor of the Complainants in the facts and circumstances of the case.

- ix. That, without admitting or acknowledging the truth or legality of the allegations advanced by the complainant and without prejudice to the contentions of the respondent, it is respectfully submitted that the provisions of the act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. It is further submitted that merely because the Act applies to ongoing projects which are registered with the authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainant for seeking refund or interest cannot be called in to aid, in derogation and in negation of the provisions of the buyer's agreement.
- x. That without admitting or acknowledging in any manner the truth or legality of the allegations levelled by the complainant and without prejudice to the contentions of the respondent. It is submitted that the project has got delayed on account that the contractor hired by the respondent i.e., ILFS (M/s Infrastructure Leasing & Financial Services), a reputed contractor in real estate, started raising certain false and frivolous issues with the respondent due to which they had slowed down the progress of work at site. The respondent was constrained to issue several letters to ILFS requesting it to proceed and complete the construction work in accordance with the decided schedule. It is submitted that the respondent cannot exercise any influence over the working of ILFS. ILFS has intentionally delayed the progress of



construction for which the respondent cannot be held liable either in equity or in accordance with the provisions of the buyer's agreement.

- xi. That without admitting or acknowledging in any manner the truth or correctness of the frivolous allegations leveled by the complainant and without prejudice to the contentions of the respondent, it is submitted that the so-called interest wrongly sought by the complainants was to be construed for the alleged delay in delivery of possession. It is pertinent to note that an offer for possession marks termination of the period of delay, if any. the complainant is not entitled to contend that the alleged period of delay continued even after receipt of offer for possession.
- xii. That it is submitted that several allottees, including the complainant and co allottee have defaulted in timely remittance of payment of instalments 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. That the respondent has duly fulfilled its obligations under the buyer's agreement, by completing construction of the unit/tower, obtaining the occupation certificate in respect thereof from the



competent authority and by offering possession of the same to the complainant and co allottee. Possession of the unit has been duly handed over and the conveyance deed has also been registered in favour of the complainant and co allottee. There is no default or lapse in so far as the respondent is concerned.

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

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.

E. Jurisdiction of the authority

8. The preliminary objections raised by the respondent regarding jurisdiction of the authority to entertain the present complaint stands rejected. The authority observed 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. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Finding on the objection raised by the respondent:-

11. Whether subsequent allottee is also an allottee as per provisions of the Act?
12. The term "allottee" as defined in the Act also includes and means the subsequent allottee, hence is entitled to the same relief as that of the original allottee. The definition of the allottee as provided in the Act is reproduced as under:

"2 In this Act, unless the context otherwise requires-

- (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”.

Accordingly, following are allottees as per this definition:

- (a) **Original allottee:** A 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.
- (b) **Allottees after subsequent transfer from the original allottee:** A person who acquires the said allotment through sale, transfer or otherwise. However, allottee would not be a person to whom any plot, apartment or building is given on rent.

From a bare perusal of the definition, it is clear that the transferee of an apartment, plot or building who acquires it by any mode is an allottee. This may include (i) allotment; (ii) sale; (iii) transfer; (iv) as consideration of services; (v) by exchange of development rights; or (vi) by any other similar means. It can be safely reached to the only logical conclusion that no difference has been made between the original allottee and the subsequent allottee and once the unit, plot, apartment or building, as the case may be, has been re-allotted in the name of the subsequent purchaser by the promoter, the subsequent allottee enters into the shoes of the original allottee for all intents and purposes and he shall be bound by all the terms and conditions contained in the builder buyer’s agreement including the rights and liabilities of the original allottee. Thus, as soon as the unit is re-allotted in his name, he will become the allottee and nomenclature “subsequent allottee” shall only remain for identification for use by the promoter. Therefore, the authority does not draw any difference between the allottee and subsequent allottee per se.

13. Reliance is placed on the judgment dated 26.11.2019 passed in consumer complaint no. 3775 of 2017 titled as **Rajnish Bhardwaj Vs. M/s CHD Developers Ltd.** by NCDRC wherein it was held as under:

"15. So far as the issue raised by the Opposite Party that the Complainants are not the original allottees of the flat and resale of flat does not come within the purview of this Act, is concerned, in our view, having issued the Re-allotment letters on transfer of the allotted Unit and endorsing the Apartment Buyers Agreement in favour of the Complainants, this plea does not hold any water....."

14. The authority concurs with the Hon'ble NCDRC's decision dated 26.11.2019 in **Rajnish Bhardwaj vs. M/s CHD Developers Ltd.** (supra) that it is irrespective of the status of the allottee whether it is original or subsequent, an amount has been paid towards the consideration for a unit and the endorsement by the developer on the transfer documents clearly implies his acceptance of the complainant as an allottee.
15. Therefore, taking the above facts into account, the authority is of the view that the term subsequent allottee has been used synonymously with the term allottee in the Act. The subsequent allottee at the time of buying a unit/plot takes on the rights as well as obligations of the original allottee vis-a-viz the same terms and conditions of the builder buyer's agreement entered into by the original allottee. Moreover, the amount if any paid by the subsequent or original allottee is adjusted against the unit in question and not against any individual. Furthermore, the name of the subsequent allottee has been endorsed on the same builder buyer's agreement which was executed between the original allottee and the promoter. Therefore, the rights and obligation of the subsequent allottee and the promoter will also be governed by the said builder buyer's agreement.

- a. Where subsequent allottee had stepped into the shoes of original allottee after the due date of handing over possession.

In cases where the complainant/subsequent allottee had purchased the unit after expiry of the due date of handing over possession, the authority is of the view that the subsequent allottee cannot be expected to wait for any uncertain length of time to take possession. Even such allottees are waiting for their promised flats and surely, they would be entitled to all the reliefs under this Act. It would no doubt be fair to assume that the subsequent allottee had knowledge of delay, however, to attribute knowledge that such delay would continue indefinitely, based on priori assumption, would not be justified. Therefore, in light of *Laureate Buildwell judgment (supra)*, the authority holds that in cases where subsequent allottee had stepped into the shoes of original allottee after the expiry of due date of handing over possession and before the coming into force of the Act, the subsequent allottee shall be entitled to delayed possession charges w.e.f. the date of entering into the shoes of original allottee i.e. nomination letter or date of endorsement on the builder buyer's agreement, whichever is earlier.

In the present complaint, the respondent had acknowledged the complainant as an allottee after the expiry of due date of handing over possession, therefore, the complainant is entitled for delay possession charges w.e.f. the date of entering into the shoes of original allottee i.e. 08.06.2018 till the date of handing over of possession i.e. 27.12.2019.

G. Findings on the reliefs sought by the complainants

- G.I Direct the respondent to pay delayed possession charges to the complainants for delay in handing over possession.
- G.II Direct the respondent to provide road connectivity facility.

- G.III Direct the respondent to comply with the terms and conditions of the licenses by providing water, electricity, sewerage treatment plant, fire-fighting arrangement, road, rainwater harvesting system.
- G.IV Direct the respondent to provide the patch which is still owned by farmers whereas the same was shown in layout plan (annexure -2) as the part of the project in the buyer's agreement.
- G.V Direct the respondent to pay compensation as the complainants resided in rented accommodation by Rs. 35,000/- per month for a period of 4 years which comes to Rs.16,80,000/- and litigation cost of Rs.2,00,000/-.
16. 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."

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

"10. POSSESSION

(a) Time of handing over the Possession

Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of the provisions of this Buyer's Agreement and compliance with all

provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 36 (Thirty Six) months from the date of start of construction, subject to timely compliance of the provisions of the Buyer's Agreement by the Allottee. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of 3 (three) months, for applying and obtaining the completion certificate/ occupation certificate in respect of the Unit and/or the Project.

18. 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 complainants 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 allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.
19. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 36 months from the start of construction and further provided in agreement that promoter shall be

entitled to a grace period of 3 months for applying and obtaining the completion certificate/ occupation certificate in respect of the complex. The date of execution of buyer's agreement is 07.02.2012. The period of 36 months expired on 09.08.2015 (as per the date of start of construction). 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 at this stage.

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

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

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

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

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

22. 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., 17.08.2022 is 8%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10%.

23. The definition of term 'interest' as defined under section 2(z) 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:

"(z) "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;"*

24. 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.

25. Considering the above-mentioned facts, the authority calculated due date of possession according to clause 10 of the buyer's agreement dated 07.02.2012 i.e., 36 months from the date of start of construction and disallows the grace period of 3 months as the promoter has not applied to the concerned authority for obtaining completion certificate/occupation certificate within the time limit 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. The complainants in the present complaint are subsequent allottees and had purchased the unit in question from the original allottee vide agreement to sell dated 08.03.2018 and thereafter, the respondent had acknowledged them as allottees vide nomination letter dated 08.06.2018. In terms of the order passed by the authority in complaint titled as **Varun Gupta Versus Emaar MGF Land Ltd. (CR/4031/2019)**, the complainants are entitled to delayed possession charges w.e.f. the due date of handing over possession as per the buyer's agreement.

26. Therefore, the authority allows DPC w.e.f. **08.06.2018 (date of nomination) till the date of handing over i.e., 27.12.2019**. The amount of compensation already paid to the complainants by the respondent as delayed compensation as per 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.

G.II Direct the respondent to provide road connectivity facility.

G.III Direct the respondent to comply with the terms and conditions of the licenses by providing water, electricity, sewerage treatment plant, fire-fighting arrangement, road, rainwater harvesting system.

G.IV Direct the respondent to provide the patch which is still owned by farmers whereas the same was shown in layout plan (annexure -2) as the part of the project in the buyer's agreement.

With respect to the aforesaid reliefs no. II, III, and IV as sought by the complainants, the authority, vide order dated 12.10.2021, taking cognizance in the matter appointed a team of local commission to visit the project site in order to substantiate the claims raised by the allottee. The local commission has submitted its report on 27.12.2021 with the following findings:



"6. CONCLUSION

The site of project "Palm Garden" being developed by "Emaar MGF Land Limited" has been inspected on 25.11.2021 as per the issues raised by the complainant and it is concluded that:

1. The project is complete, and occupation certificate has been obtained by the promoter. The promoter has also applied for completion certificate of the project on 07.09.2021.
2. The connectivity of project is shown on 24m wide road through three entrances as per approved site plan and plan attached with BBA. As on date the 24m wide roads are not developed completely/connected to the main road. Only the patches of licensed land falling under 24m wide roads are developed by the respondent. As per site visit all the three entrances are operational but the entrances can only be reached by travelling on 3.5m wide Revenue Rasta and the internal roads of adjacent colony which is a temporary connectivity to the project. Therefore, keeping in view the above it is submitted that the proper connectivity of roads to the project (i.e., 24m roads) is not provided/developed till date.
3. There is difference between approved site plan and site plan attached with BBA. There is a small patch of approx. 500 sqm area in between the project area which is owned by other person and the respondent at the time of signing the BBA shown the plan attached with BBA wherein this others land is stated to be owned by the respondent and to be developed as landscaped area for the project. Hence this area was promised by the respondent to be developed as landscaped area but as on date as per site status this area is separated from the project area by constructing boundary wall as approved by concerned department.
4. The respondent had applied for water connection but till date the connection is not granted. Water is being supplied through tankers.
5. The respondent had applied for sewer/storm connection but till date the connection is not granted.
6. The respondent had got approved revised electrification plan with ultimate load of 6931.2 KW or 7701.4 KVA. The sanctioned load will be fed from 33 KV switching station (which will be finalized by SE/Op, Gurugram-I). As on date partial load of 900 KW or 1000 KVA has been connected to the project.
7. STP and firefighting facilities are provided by the respondent and are fully functional.
8. Fifteen number of photographs captured during site inspection are attached herewith as annex-B.
9. Approved site plan, site plan as per BBA and other documents are attached herewith as annex-C."



The counsel for the complainants brought to the notice of the authority that basement is leaking badly. The promoter is directed to rectify the defect as pointed out by the complainant including the leakage of basement. The promoter is further directed to fulfil the pending/subsisting obligations. Compliance of these directions be done within 2 months with a copy of registry and the complainant. The complainant is at liberty to come before the authority for non-compliance of directions by the respondent.

27. **Direct the respondent to pay compensation as the complainants resided in rented accommodation by Rs.35,000/- per month for a period of 4 years which comes to Rs.16,80,000/- and litigation cost of Rs.2,00,000/-.**

The complainants in the aforesaid relief are seeking relief w.r.t. compensation. Hon'ble Supreme Court of India, in case titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled for claiming compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. Therefore, the complainant is advised to approach the adjudicating officer for seeking compensation. Therefore, the complainant is at liberty to approach the adjudicating officer for seeking compensation.

28. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainants are entitled to

delay possession charges at prescribed rate of the interest @ 10 % p.a. w.e.f. 08.06.2018 (date of nomination) till the date of handing over i.e. 27.12.2019.

H. Directions of the authority

29. Hence, the authority hereby passes this order and issues 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 08.06.2018 (date of nomination) **(inadvertently recorded wrong as 09.08.2015 in proceeding dated 17.08.2022)** till the date of handing over i.e. 27.12.2019. 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 rate of interest chargeable from the allottee 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 allottee, in case of default i.e., the delay possession charges as per section 2(za) of the Act.
- iii. The promoter is directed to rectify the defect as pointed out by the complainant including the leakage of basement. The promoter is further directed to fulfil the pending/subsisting obligations. Compliance of these directions be done within 2 months with a copy of registry and the complainant.

iv. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement. The respondent is also not entitled to claim holding charges from the complainants/allottees at any point of time even after being part of the buyer's agreement as per law settled by hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

30. Complaint stands disposed of.

31. File be consigned to registry.

v.i. 
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.08.2022


(Dr. K.K. Khandelwal)

Chairman

HARERA
GURUGRAM