

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

Complaint no.	:	588 of 2022
Date of filing complaint	:	11.02.2022
First date of hearing	:	26.04.2022
Date of decision	:	23.11.2022

Sh. Siddharth Chawla S/o Sh. R/o: Flat no. 418, City Heights, South City	Complainant
Versus	
Assotech Moonshine Urban Developers Private Limited Regd. office: 148 F, Pocket IV, Mayor Vihar, Phase- I, Delhi 110091	Respondent
CORAM:	
Dr. K.K. Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Geetansh Nagpal (Advocate)	Complainant
None	Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee 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 under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of unit details, 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:

S.No.	Heads	Information
1.	Project name and location	"Assotech Blith", Sector-99, District-Gurugram, Haryana
2.	Project area	12.062 acres
3.	Nature of the project	Group Housing Project
4.	DTCP license no. and validity status	95 of 2011 dated 28.10.2011 Valid up to 27.10.2024
5.	Name of licensee	M/s Moonshine Urban Developers Private Limited M/s Uppal Housing Private Limited
6.	HRERA registered/ not registered	Registered Vide registration no. 83 of 2017 dated 23.08.2017 Valid up to 22.08.2023
7.	Allotment letter dated	11.07.2012 (As per page no. 47 of complaint) (No builder buyer agreement has been executed inter-se parties, but a similar document containing

		rights and liabilities of both the parties has been placed on record)
8.	Unit no.	C-1903 on 19 th floor, tower C (As per page no. 48 of complaint)
9.	Super area admeasuring	1365 sq. ft. (As per page no. 48 of complaint)
10.	Endorsement dated	26.04.2014 (As per page no. 71 of complaint)
11.	Payment plan	Construction linked payment plan (As per page no. 70 of complaint)
12.	Total consideration	Rs. 70,66,750/- (As per schedule E on page no. 69 of complaint)
13.	Total amount paid by the complainant	Rs. 69,43,209/- (As per customer ledger dated 22.12.2021 on page no. 100 of complaint)
14.	Possession Clause	As per Clause 19(I) , <i>The possession of the apartment shall be delivered to the allottee(s) by the company within 42 months from the date of allotment subject to the force majeure, circumstances, regular and timely payments by the intending allottee(s), availability of building material, change of laws by governmental/ local authorities, etc.</i>
15.	Grace period clause	As per Clause 19(II) , <i>In case the Company is unable to construct the apartment within</i>

		<p><i>stipulated time for reasons other than as stated in sub-clause 1, and further within a grace period of six months, the Company shall compensate the intending Allottee (s) for delayed period @Rs. 10/- per sq. ft. per month subject to regular and timely payments of all installments by the Allottee (s). No delayed charges shall be payable within the grace period. Such compensation shall be adjusted in the outstanding dues of the Allottee (s) at the time of handing over possession.</i></p>
16.	Due date of possession	<p>11.07.2016</p> <p>(Due date as per clause 19(1) i.e.; 11.07.2012 + 42 months with grace period of 6 months)</p> <p>Grace- period is allowed</p>
17.	Occupation certificate	<p>Not obtained</p> <p>(Applied for OC on 15.04.2021)</p>
18.	Offer of possession	Not offered

B. Facts of the complaint

3. That relying upon the assurances and representations of the respondent, a unit was booked by the original allottee, Mr. Namish Kumar on 09.03.2012 in its project namely, "Assotech Blith", situated at sector-99, Gurugram and paid booking amount of Rs 5,00,000/-.
4. That the respondent vide letter dated 11.07.2012, allotted a unit bearing unit no. C-1903 admeasuring 1365 sq. ft. for a total

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consideration of Rs. 70,66,750/- including BSP, PLC, EDC etc to the complainant.

5. That as per clause 19 (I) and (II) of allotment letter, possession of subject unit was to be delivered within 42 months with further grace period of 6 months from the date of allotment letter, subject to force majeure circumstances, regular and timely payment by the allottee and availability of building materials. The respondent failed to complete the construction work and consequently deliver the same, till date. The drafting of those clauses' and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter. The incorporation of such clause in the flat buyer's agreement/allotment letter 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. 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. The pre-set possession clause of the agreement is wherein the possession has been subjected to all kinds of terms and conditions.
6. That the complainant has made timely payment as per payment plan and demands raised and till date, he has already paid an amount of Rs. 53,79,652.00/-. But to his utter dismay, the possession of the

apartment has not been offered as assured by the respondent. Despite payment of approximately 76% of the total sale consideration, it has failed to give any information about the progress of construction, which was scheduled to be completed in year 2016 and failed to provide definite date for delivery of possession.

7. That the complainant addressed several e-mails, telephonic representations and visits to the office of the respondent, on various occasions and the same were of no avail.
8. That due to such delay in handing over of possession, the complainant was required to take on rent the premise for the residence of the his mother. He was also required to pay monthly instalments on the loan availed by him for purchase of the said apartment which includes payment at a higher rate of interest.

C. Relief sought by the complainant:

9. The complainant has sought following relief(s):
 - i. Direct the respondent to handover the possession to the complainant as soon as possible.
 - ii. Direct the respondent to hand over the possession of the unit of the complainant once it is ready, in all respects with proper road electrification of roads functioning of club etc. and other things which was assured in the brochure while booking the unit in the complex based on the brochure and not a stand-alone flat.



- iii. Direct the respondent to adjust the entire amount of interest due from the date of delivery against the demands from the complainant, if any, as per the guidelines laid in Act of 2016.
 - iv. Direct the respondent to pay the balance amount due to the complainant from it on account of interest as per guidelines laid in act of 2016 before signing the sale deed.
 - v. Restrain the respondent from raising any fresh demand with respect of the project.
 - vi. Direct the respondent not to charge anything irrelevant which has not been agreed to between the parties like increased amount of installments, not payable by the complainant.
 - vii. Direct the respondent not to charge anything on account of increase in the super area, as same being not permissible as per the Act .
 - viii. Direct the respondent to withdraw the excessive demands raised against the internal paintings and adjusted the same before issuing any further demands
 - ix. Direct the respondent to not to charge anything towards GST.
 - x. Direct the respondent not to charge anything towards HVAT
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

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11. The respondent has contested the complaint on the following grounds.
- i. That the complainant has concealed the material facts from the authority. He has admittedly on 08.01.2014 has purchased the flat bearing no. C-1903 in 'Assotech Blith' (hereinafter referred to as the "Project") in resale from original allottee Mr. Namish Kumar after going through all the pros and cons and knowing the status of construction of the tower/project. The original allottee booked the subject flat on 09.03.2012 for a total sale consideration of Rs. 70,66,750/- (excluding applicable taxes). Thereafter, terms and conditions of allotment letter (hereinafter referred as "agreement") was executed on 11.07.2012 between the respondent and the original allottee. It is pertinent to note here that the said agreement dated 11.07.2012 has been admitted by the complainant herein and is also being relied upon by him.
 - ii. That as per clause 19(I) of the agreement, the possession of the apartment was to be offered to the allottee(s) by the company within 42 months from the date of allotment subject to the force majeure circumstances, regular and timely payments by the allottee(s), availability of building material, change of laws by governmental/local authorities etc. It is clear that the possession of the flat was proposed to be handed over within 42 months and the said possession period was extendable due to force majeure circumstances or other similar circumstances beyond the control of the developer. Hence, the developer was entitled for an extension of time for delivery of the possession of the said apartment.

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- iii. That as per the clause 19(II) of the allotment letter, the parties agreed to the provisions stipulated for delayed possession penalty at Rs. 10/- per sq. ft. of the area of the flat per month subject to applicability of other terms and conditions of the allotment letter. It was unambiguously clear that if delay in possession of the flat is occurred due to unforeseen circumstances beyond the control of the respondent, it would not be responsible to pay delay possession penalty to the allottee.
- iv. That the relief sought by the complainant from this authority is not tenable in the eyes of law, as the delay in delivery of project is due to the force majeure circumstances beyond its control. The reasons attributable for delay in delivery of possession is mentioned herein under: -
- a. That in year 2012, M/s. Assotech Ltd. created its subsidiary company - M/s. Assotech Moonshine Urban Developers Pvt. Ltd i.e. the respondent company. M/s. Assotech Limited is a holding company of respondent having more than 50% shareholding and rest 49% shareholding of the respondent company was with M/s. SA Mallika Ventures Ltd. M/s. Assotech Ltd. being the holding and parent company of respondent having more than 50% shareholding has control over the affairs of the respondent company.
- b. That the respondent, M/s. Assotech Limited and two investors- M/s. S.A. Mallika Ventures Ltd. and M/s. Mallika SA Investments LLC, on 20.01.2012, had entered into an investment agreement

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and a project management agreement (PMA) dated 20.01.2012 for the development of residential group project. As per the investment agreement, the investment, made by the investors was to be utilized for construction and development of the project in question. In terms of PMA, the Assotech Limited was engaged as project manager who was to be responsible for execution, development, management, construction and supervision of the project inter-alia including day to day activities such as marketing, sales and financial management etc. The Assotech Ltd. was responsible for developing the project within committed timelines and guaranteed costs. The respondent and M/s. Assotech Ltd. had also entered into a 'construction contract agreement' dated 03.04.2012 whereby the Assotech Ltd., who was a promoter shareholder of the respondent company and had invested Rs. 44.27 crore was also appointed by the respondent as a construction contractor responsible for the construction of the project.

- c. That somewhere between in year 2013 and 2015, Assotech Ltd. got into a bad financial crunch pursuant to which Mr. Manmohan Singh Bhalla preferred a company petition before Hon'ble Delhi High Court against the Assotech Ltd. (holding and contractor company) for initiation of liquidation proceedings u/s 433 of the Companies Act. Subsequently, vide order dated 08.02.2016, official liquidator was appointed as provisional liquidator by the Hon'ble High Court. The progress has been severely delayed as the respondent has not put in

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sufficient time, attention and resources for the continued construction and completion of the project within stipulated timelines.

- d. That apart from the above, the nominee director of the above investor company had filed a police complaint with the SHO, PS Sushant Lok, Haryana inter alia requesting for registration of FIR against the Assotech Ltd. In the light of above events, the said investor companies vide their letter dated 13.05.2016 invoked the event of default clause in terms of the investment agreement against the Assotech Ltd. which affected the pace of construction of the project and delayed the delivery of possession of the flat.
- e. That beside to the above, the project is delayed on account of initiation of liquidation proceedings against M/s. Assotech Ltd., to whom contract for development of the project in question was awarded by the respondent company as well as due to failure of Assotech Ltd. to discharge its obligation under the investment agreement, project management agreement and the construction contract agreement. Under these agreements, M/s. Assotech Ltd. was under obligated to construct and deliver the project within stipulated time and cost limits specified under the agreement.
- f. That the project is delayed due to the disputes arose between M/s. Assotech Ltd. and the investors, described above. Subsequent to that dispute, the Investors stopped making payments to the vendors, suppliers, contractor etc. which attributed delay in construction of the project in question.

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- g. Vide order dated 07.04.2015, the Hon'ble NGT in OA no. 95/2014, restricted construction activities in NCR due to rising air pollution. Apart from the above, the Hon'ble Supreme Court, Environment Pollution (Prevention & Control) Authority ("EPCA") for the National Capital Region and the Hon'ble National Green Tribunal ("NGT") had issued various orders/ directions/ guidelines from time to time since 2016 for complete ban on construction activities in National Capital Region which includes the entire District Gurugram for the control of air pollution.
- h. In year 2016, the NGT passed an order in O.A. No.-21/2014 on 08 Nov' 2016 and banned all construction activities in NCR and same was lifted by passing the guidelines through order dated 23 Nov' 2016 in the same case. So, the construction work was stopped for 16 days.
- i. In the year 2017, NGT passed an order in O.A. No.-21/2014 on 09 Nov' 2017 and banned all construction activities in NCR and same was lifted by passing the guidelines through the order dated 17.11.2017 in same case. So, the construction work was again stopped for 09 days.
- j. In the year 2018, the EPCA released a press note on 31.10.2018 and banned all the construction activities in NCR from 01.11.2018 to 10.11.2018, resulting in stoppage of construction 10 days.
- k. In the year 2019, the EPCA issued guidelines on 01.11.2019 and banned all construction activities in NCR up to 05.11.2019. The same time, Hon'ble Supreme Court of India, passed an order in

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Writ Petition (Civil) NO.- 13029/1985, titled - M. C. Mehta Vs. Union of India & Ors. on 04.11.2019 and banned all construction activities in NCR and same was lifted by passing the order dated 09.12.2019 in same case. So, the construction work was again stopped for 39 days.

The summary of total stoppage of construction work in NCR is as following: -

Year	Authority	Date of ban on construction activities	Date of lifting of ban on construction activities	No. of ban days
2016	NGT	08 Nov' 2016	23 Nov' 2016	16
2017	NGT	09 Nov' 2017	17 Nov' 2017	09
2018	EPCA	01 Nov' 2018	10 Nov' 2018	10
2019	EPCA/ Hon'ble Suprem e Court	01 Nov' 2019	09 Dec' 2019	39
Total Days Ban on Construction Activities				74

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1. Due to sudden stoppage of the construction work, site staff, contractors, construction labour and machinery involved in construction work became idle. Once the construction work at site is stopped, then it takes at least one to two months to start and gearup the work to achieve the stage on which, it was stopped. That due to the COVID-19 pandemic, the nationwide lockdown was imposed by the Government of India from 25.03.2020. During the lockdown, a large number of labour moved to their native villages/home town from the NCR. In view of the situation, the Govt. of India *suo moto* extended the construction period of all projects by 9 months due to COVID 19 pandemic. After the unlock, time to time declared by the Govt., the respondent started the construction activities at the project with few labour and material under the guidelines of the Government.
12. All other averments made in the complaint were denied in toto.
13. 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 based on these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

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

14. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

15. 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

16. 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

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compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on 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

17. The respondent raised a contention that the authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the flat 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 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. The 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*

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Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017) decided on 06.12.2017 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 as under-

"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 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 any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

F.II Objection regarding delay due to force majeure circumstances

20. The respondent-promoter has raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the National Green Tribunal, Environment Pollution (Prevention & Control) Authority, institution of liquidation proceedings against the contractor-company i.e. Assotech Limited and appointment of official liquidator and lock down due to outbreak of Covid-19 pandemic, etc. Since, there were circumstances beyond the control of respondent. So, taking into consideration the above-mentioned facts, the respondent be allowed the period during which construction activities came to stand still, and the said period be excluded while calculating the due date. But the plea

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taken in this regard is not tenable. The due date for completion of project is calculated as per clause 19 (I) & 19(II) of letter of allotment. Though there has been various orders issued to curb the environment pollution, but these were for a short period of time. So, the circumstances/conditions after that period can't be taken into consideration for delay in completion of the project.

21. The respondent alleged that due to litigation proceedings going on against the contractor company, "Assotech Limited" in the Delhi High Court vide co. petition no. 357 of 2015 in the mid of year 2015, process of provisional liquidation has been initiated against Assotech Limited. Due to appointment of official liquidator, office of respondent company was sealed, and various restrictions were levied, due to which construction of the project was affected badly. "Assotech Moonshine Urban Developers Private Limited" is a subsidiary of "Assotech Limited" and there was a contract inter-se respondent and "Assotech Limited" for development of project. But it is pertinent to note that neither the complainant is party to such contract nor liquidation proceedings are binding on him. Hence, there was no privity of contract of the complainant with those companies. Hence, the plea of the respondent on account of delay in completion due to initiation of liquidation proceedings is not tenable.

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22. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as ***M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020*** dated 29.05.2020 has observed that-

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."

The respondent was liable to complete the construction of the project and handover the possession of the said unit was to be handed over within 42 months from date of execution of allotment along with grace period of 6 months which comes out to be 11.07.2016 and is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

G. Findings on the relief sought by the complainant

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G.I Direct the respondent to handover the possession to the complainant as soon as possible.

G.II Direct the respondent to kindly handover the entire position of the unit of the complainant once it is ready, in all respects with proper road electrification of roads functioning of club etc. and other things which was assured in the brochure as the complainant booked a unit in a complex based on the brochure and not a stand-alone flat.

23. For a valid offer of possession, the offer must be made after obtaining occupation certificate from competent authority. The respondent-builder applied for obtaining occupation certificate on 15.04.2021 but there is nothing on record to show that the said certificate has been granted to the respondent. In view of aforesaid circumstances, the respondent is directed to offer the possession of the allotted unit to the complainant within one month after obtaining occupation certificate, complete in all aspects as per specifications of allotment letter dated 11.07.2012.

G.III Direct the respondent to adjust the entire amount of interest due to the complainant from the date of delivery. As per the buyers agreement to the actual delivery of possession against the demands from the complainant, if any, as per the guidelines laid in Act of 2016.

G.IV Direct the respondent to pay the balance amount due to the complainant from the respondent on account of interest as per guidelines laid in act of 2016 before signing the sale deed

24. The complainant is asking for relief of delay possession charges in above mentioned relief no. 3 & 4. 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.

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"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, —

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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 19(I) of the allotment dated 11.07.2012 provides for handing over of possession and is reproduced below:

"Clause 19(I).

The possession of the apartment shall be delivered to the allottee(s) by the company within 42 months from the date of allotment subject to the force majeure, circumstances, regular and timely payments by the intending allottee(s), availability of building material, change of laws by governmental/ local authorities, etc."

26. The authority has gone through the possession clause of the agreement and observes that the respondent-developer proposes to handover the possession of the allotted unit within a period of 42 months from the date of allotment. In the present case, the allotment was on 11.07.2012 as such the due date of handing over of possession comes out to be 11.01.2016.
27. **Admissibility of grace period:** As per clause 19(I) of allotment letter dated 11.07.2012, the respondent-promoter proposed to handover the possession the said unit within a period of 42 months. As per clause 19(II) of said allotment letter, the respondent-promoter was

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entitled for period of 6 months as grace period. The said clause of the allotment letter has been reproduced hereunder: -

"Clause 19(II)

*In case the Company is unable to construct the apartment within stipulated time for reasons other than as stated in sub-clause I, and **further within a grace period of six months**, the Company shall compensate the intending Allottee (s) for delayed period @Rs. 10/- per sq. ft. per month subject to regular and timely payments of all installments by the Allottee (s). No delayed charges shall be payable within the grace period. Such compensation shall be adjusted in the outstanding dues of the Allottee (s) at the time of handing over possession."*

28. The said clause is unconditional and provides that if the respondent is unable to complete the construction of the allotted unit within stipulated period of 42 months, then a grace period of 6 months shall be allowed it. There were situations beyond the control of respondent such as institution of liquidation proceedings against the contractor company, resulting in shortage of labour at project due to stoppage of work at the project site. So, the authority is of view that the said grace period of 6 months shall be allowed to the respondent. Therefore, as per clause 19(I) & 19(II) of the allotment letter dated 11.07.2012, the due date of possession comes out to be 11.07.2016.

29. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges however, 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

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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.*

30. The legislature in its wisdom in the subordinate legislation under the provision of 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.
31. 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., 23.11.2022 is @ 8.35%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.35%.
32. 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:

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“(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;”*

33. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.35% by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
34. The complainant is a subsequent allottee. The said unit was transferred in the favour of the complainant on 26.04.2014 i.e., before the due date of handing over of the possession (11.07.2016) of the allotted unit. As decided in **complainant no. 4031 of 2019 titled as Varun Gupta Vs. Emaar MGF Land Limited**, the authority is of the considered view that in cases where the subsequent allottee has stepped into the shoes of original allottee before the due date of handing over possession, the delayed possession charges shall be granted w.e.f. due date of handing over possession.
35. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 19(I) & 19(II) of the

allotment letter executed between the parties on 11.07.2012, the possession of the subject apartment was to be delivered within a period of 42 months plus 6 months from date of execution of such allotment cum agreement. The due date of possession is calculated from the date of allotment letter i.e.; 11.07.2012, which comes out to be 11.07.2016.

36. 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 has yet not obtained by the respondent- builder and has applied for the grant of occupation certificate vide letter dated 15.04.2021. The respondent shall offer the possession of the subject unit to the complainant after obtaining occupation certificate. So, it can be said that the complainant would come to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 months' of reasonable time is to be given to the complainant keeping in mind that even after intimation of possession practically he has 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. 11.07.2016 till the expiry of 2 months from the date of

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offer of possession or till actual handing over of possession, whichever is earlier.

37. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the allotment letter dated 11.07.2012 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 11.07.2016 till the date of actual handing over of possession or till offer of possession plus 2 months, whichever is earlier; at the prescribed rate i.e., 10.35 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

G.V Restrain the respondent from raising any fresh demand with respect of the project.

G. VI Direct the respondent not to charge anything irrelevant which has not been agreed to between the parties like increased amount of installments, which in any case is not payable by the complainant.

G.VIII Direct the respondent to withdraw the excessive demands raised against the internal painting and adjusted the same before issuing any further demands

38. The above-mentioned relief no. V, VI & VIII, as sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and these being interconnected. It is a settled principle of law that the respondent shall

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not charge anything from the allottee which is not part of buyer's agreement i.e. allotment letter in present case.

G.VII Direct the respondent note to charge anything on account of increase in the super area, as same being not permissible as per the Act.

39. There is nothing on record to show that the super area of the subject unit has been increased. Moreover, nothing in this regard has been submitted by the complainant in this regard during the course of the proceedings. Hence, no direction to this effect can be issued.

G.IX Direct the respondent to not to charge anything towards GST.

G.X Direct the respondent note to charge anything towards HVAT.

40. 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 it has been 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.

41. In the present complaint, the possession of the subject unit was required to be delivered by 11.07.2016 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 respondent's own fault in delivering timely possession of the subject unit. So, the respondent/promoter is not entitled to charge GST from

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the complainant/allottee as the liability of GST had not become due up to the due date of possession as per the said agreement.

42. However, as far as VAT is concerned, the respondent is entitled to charge taxes applicable at that point of time as per applicable law.

H. Directions of the authority

43. 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 shall pay interest at the prescribed rate i.e. 10.35% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e.; 11.07.2016 till the date of actual handing over of possession or till offer of possession plus 2 months after obtaining occupation certificate, whichever is earlier; as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- ii. The respondent is directed to offer the possession of the allotted unit to the complainant within one month after obtaining occupation certificate, complete in all aspects as per specifications of allotment letter dated 11.07.2012.
- iii. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.
- iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

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- v. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- vi. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.35% 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 delayed possession charges as per section 2(za) of the Act.
44. Complaint stands disposed of.
45. File be consigned to registry.

Vijay
(Vijay Kumar Goyal)
Member

[Signature]
(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.11.2022