

Complaint no. 5368 of 2022

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

Complaint no. 5368 of 2022
Order reserved on: 27.10.2022
Date of pronouncement of order: 12.01.2023

1. Madho Singh Rawat 2. Bhawna Rawat Both R/o:-Flat no. 193, 1 st floor Indraprastha Colony Sector-30/33, Faridabad	Complainants
Versus	
Emaar MGF Land Limited Address: - Emaar Business Park, MG Road, Sikanderpur Chowk, Sector 28, Gurugram - 122002, Haryana.	Respondent

CORAM:

Shri Vijay Kumar Goyal	Member
Shri Sanjeev Kumar Arora	Member

APPEARANCE:

Shri Neeraj Goel
Shri J.K.Dang

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint dated 01.08.2022 has been filed by the complainants/allottees 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. Project and unit related details

2. 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
	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.	Unit no.	GGN-20-0902, 09 th floor, building no. 20 [Page 50 of complaint]
7.	Unit measuring	1650 sq. ft.
8.	Provisional allotment letter dated	25.01.2013 [Page 53-59 of reply]
9.	Date of execution of buyer's agreement	04.04.2013 [Page 47 of complaint]
10.	The complainants are subsequent allottee	Agreement to sell dated 25.06.2015 executed between the original allottee and the complainants. The respondent acknowledged the complainant as allottee vide nomination letter dated 28.07.2015 (annexure R9, page 131 of reply).
11.	Possession clause	14. POSSESSION (a) Time of handing over the Possession <i>Subject to terms of this clause and barring force majeure conditions, subject to the Allottee having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the</i>

		<p><i>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 Agreement by the Allottee. The Allottee agrees and understands that the Company shall be entitled to a grace period of 5 (five) months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project.</i></p> <p>(Emphasis supplied) (page 63 of the complaint)</p>	
12	Date of start of construction as per statement of account dated 31.05.2019 at page B1-83 of complaint	16.06.2013	
13	Due date of possession	16.06.2016 [Note: Grace period is not included]	
14	Total consideration	Rs. 93,97,862/- as per schedule of payment page 95 of complaint	Rs. 97,55,919/- Total consideration as per SOA dated 31.05.2019
15	Total amount paid by the complainants as per statement of account dated 31.05.2019 at page 81-83 of complaint	Rs.95,21,437/-	
16	Occupation certificate	30.05.2019	

		[Page 152 of reply]
17	Offer of possession	31.05.2019 [page 155 of reply]
13.	Unit handover letter dated	27.07.2019 [page 160 of reply]
14.	Conveyance deed executed on	28.08.2019 [page 168 of reply]
15.	Delay compensation already paid by the respondent in terms of the buyer's agreement as per statement of account dated 31.05.2019 at page 82 of complaint	Rs.3,77,149/-

B. Facts of the complaint

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

- i. That the complainant while searching for a flat/accommodation was lured by such advertisements and calls from the brokers of the respondent for buying a house in their project namely emerald estate apartments. the respondent company told the complainant about the moonshine reputation of the company and the representative of the respondent company made huge presentations about the project mentioned above and also assured that they have delivered several such projects in the

National Capital Region. The respondent handed over one brochure to the complainant which showed the project like heaven and in every possible way tried to hold the complainant and incited the complainant for payments.

- ii. That the relying on various representations and assurances given by the respondent company and on belief of such assurances, complainants, booked a unit in the project by paying an amount of Rs. 7,50,000.00 dated 25.01.2013, towards the booking of the said unit bearing no. Unit GGN-20-0902, in sector 102, having super area measuring 1650 sq. ft. to the respondent dated 25.01.2013 and the same was acknowledged by the respondent.
- iii. That the respondent confirms the booking of the unit to the original allottee vide allotment letter dated 25.01.2013, providing the details of the project and allotting a unit no. unit GGN-20-0902, in Sector 102, (hereinafter referred to as 'unit') measuring 1650 Sq. Ft (super built-up area) in the aforesaid project of the developer for a total sale consideration of the unit i.e. Rs. 1,03,39,342.00, which includes basic price, Plus EDC and IDC, Car parking charges and other specifications of the allotted unit and providing the time frame within which the next instalment was to be paid.
- iv. That a buyer's agreement was executed between the complainants and respondent on 04.04.2013. Further, the complainant having dream of its own residential unit in NCR signed the agreement in the hope that the unit will be delivered on or before April, 2016.

the complainants were also handed over one detailed payment plan which was construction linked plan. it is unfortunate that the dream of owning a unit of the complainant was shattered due to dishonest, unethical attitude of the respondents.

- v. As per clause 14(a) of the buyer's agreement the respondent had to deliver the possession of the unit within period of 36 months from the date of start of construction plus five months grace period. Therefore, the due date of possession comes out to be 04.09.2016. That the payment plan was designed in such a way to extract maximum payment from the buyers viz a viz or done/completed. the complainant approached the respondent and asked about the status of construction and also raised objections towards non-completion of the project. It is pertinent to state herein that such arbitrary and illegal practices have been prevalent amongst builders before the advent of RERA, wherein the payment/demands/ etc. have not been transparent and demands were being raised without sufficient justifications and maximum payment was extracted just raising structure leaving all amenities/finishing/facilities/common area/road and other things promised in the brochure, which counts to almost 50% of the total project work.
- vi. That During the period the complainant went to the office of respondent several times and requested them to allow them to visit the site, but it was never allow saying that they do not permit any buyer to visit the site during construction period,

once complainant visited the site but was not allowed to enter the site and even there was no proper approached road. The complainant even after paying amounts still received nothing in return but only loss of the time and money invested by them.

- vii. The complainant contacted the respondent on several occasions and were regularly in touch with the respondent. the respondent was never able to give any satisfactory response to the complainant regarding the status of the construction and were never definite about the delivery of the possession. The complainant kept pursuing the matter with the representatives of the respondent by visiting their office regularly as well as raising the matter to when will they deliver the project and why construction is going on at such a slow pace, but to no avail. Some or the other reason was being given in terms of shortage of labour etc. etc.
- viii. That in terms of clause 14 (a) of the said buyer's agreement (as already referred above), respondent was under dutiful obligation to complete the construction and to offer the possession on or before 04.09.2016. That complainant approached in person to know the fate of the construction and offer of possession in terms of the said buyer's agreement, respondent misrepresented to complainants that the construction will get completed soon. The respondent despite having made multiple tall representations to the complainant, the respondent has chosen deliberately and contemptuously not

to act and fulfil the promises and have given a cold shoulder to the grievances raised by the cheated allottees.

- ix. The respondents have completely failed to honour their promises and have not provided the services as promised and agreed through the brochure, BA and the different advertisements released from time to time. Further, such acts of the respondent are also illegal and against the spirit of RERA Act, 2016 and HRERA Rules, 2017. It is abundantly clear that the respondents have played a fraud upon the complainants and have cheated them fraudulently and dishonestly with a false promise to complete the construction over the project site within stipulated period. The respondent had further malafidely failed to implement the FBA executed with the complainants. Hence, the complainants being aggrieved by the offending misconduct, fraudulent activities, deficiency and failure in service of the respondent is filing the present complaint.
- x. The complainant has suffered a loss and damage in as much as they had deposited the money in the hope of getting the said Unit for residential purposes. They have not only been deprived of the timely possession of the said Unit but the prospective return they could have got if they had invested in fixed deposit in bank. Therefore, the compensation in such cases would necessarily have to be higher than what is agreed in the BBA. The complainant after many requests and emails; received the offer of possession on 31.05.2019.



- xi. As per the demands raised by the respondent, based on the payment plan, the complainant to buy the captioned unit already paid a total sum of Rs. 1,03,39,342/- towards the said unit against total sale consideration of Rs. 90,86,750/-. It is pertinent to note here that along with the above said letter of offer of possession, respondent raised several illegal demands on account of the following which are actually not payable as per the builder buyer agreement Advance monthly maintenance for 24 months of Rs. 1,44,540/-, HVAT of Rs. 2,48,063/-. That offering possession by the respondent on payment of charges which the flat buyer is not contractually bound to pay, cannot be considered to be a valid offer of possession. It would be noticed from the details provided above that those charges were never payable by the complainants as per the agreement, by the complainant and hence the offer of possession.
- xii. That it has been held by the honourable NCDRC, New Delhi in many cases that offering of possession on the payment of charges which the flat buyer is not contractually bound to pay, cannot be considered to be a valid offer of possession. In the present case asking for charges as elaborated above, which the allottees are not contractually bound to pay is illegal and unjustified and therefore not a valid offer of possession. In fact it is a letter for demand of money rather than being an offer of possession. Advance maintenance being charged for two years from the complainants by the respondent which is illegal and

unjustified and against the law. That the respondent asked for 24 months of advance maintenance charges amounting to Rs 1,44,5400/- from the complainants which is absolutely illegal and against the laws of the land and having no option left complainant paid the same also.

xiii. That the respondent asked the complainants to sign the indemnity bond as perquisite condition for handing over of the possession. Complainants raised objection to above said pre-requisite condition of the respondent as no delay possession charges was paid to the complainants but respondent instead of paying the delay possession charges clearly refuse to handover to possession if the complainants do not sign the aforesaid indemnity bond. Further, the complainants left with no option instead of signing the same. The purpose of quoting this example is that not only the BBA is one sided heavily loaded in favour of the Respondent but even the Settlement-cum-amendment agreement is also heavily loaded in favour of the respondent. Needless to mention that such one-sided agreements have been held to be unconstitutional and hence in valid by the honourable supreme court and the honourable high courts in number of cases.

xiv. That the complainants after many follow ups and reminders, and after clearing all the dues and fulfilling all one-sided demands and formalities as and when demanded by the respondent got the physical handover of the unit. Further, respondent issued

handover advice letter. Thereafter, respondent issued handover letter dated 27.07.2019 on account of handing over the physical possession of the unit. That the complainants after many follow ups and reminders, and after clearing all the dues and fulfilling all one-sided demands and formalities as and when demanded by the respondent got the conveyance deed executed. While this sale deed acknowledges that the complainant have paid the total consideration of Rs. 1,03,39,342.00 towards full and final consideration of the said apartment and applicable taxes etc, it makes no provision for compensating the complainants for the huge delay in handing over the flat and project. The complainants were not given any opportunity to negotiate the terms of the said sale deed.

- xv. The buyer's agreement issued to the complainants by the respondent stipulates payment of compensation on account of delay in handing over possession of the flat in the project. The so-called compensation payable as per the said agreement is Rs. 7.50/- per sq. ft. per month. It is respectfully submitted that the said amount is atrociously low and unfair. No compensation was provided to the Complainants till date. It is respectfully submitted that the Hon'ble National Consumer Disputes Redressal Commission, in a similar case, **Shri. Satish Kumar Pandey &Anr. v. M/s. Unitech Ltd.**, Consumer case no. 427 of 2014, has noted that the payment of the aforesaid Rs. 7.50/- as compensation is very less because the penalty payable by a

home buyer in the event of default in making payments to the builder is much more. The hon'ble commission has also taken note of the fact that the home loan interest rates are very high and in the event the builder does not deliver the flats on time, it ought to pay reasonable equitable rate of compensation in lieu of such delay. The complainant is entitled to the refund of the illegal parking space charges paid by him. The complainant after losing all the hope from the respondent company, having their dreams shattered of owning a flat & having basic necessary facilities in the vicinity of the Gurgaon Green project and also losing considerable amount, are constrained to approach this authority for redressal of their grievance.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):

- i. Direct the respondent to pay the interest on account of delay in offering possession on Rs.1,03,39,342/- paid by the complainant as total sale consideration of the said flat from the date of payment till the date of delivery of possession.
- ii. It is most respectfully prayed that this authority be pleased to order the respondent to pay the balance amount due to the complainants from the respondent on account of the interest, as per the guidelines laid in the Rera, 2016.
- iii. Direct the respondent to issue necessary instruction to complainant's bank to remove the lien marked over fixed deposit in favour of respondent on the pretext of future

payment of HVAT.

5. 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

6. The respondent has contested the complaint on the following grounds.
 - i. That the complainants have got no locus standi or cause of action to file the present complaint. the present complaint is based on an erroneous interpretation of the provisions of the act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 04.04.2013, as shall be evident from the submissions made in the following paras of the present reply. The respondent craves leave of this authority to refer to and rely upon the terms and conditions set out in the buyer's agreement in detail at the time of the hearing of the present complaint, so as to bring out the mutual obligations and the responsibilities of the respondent as well as the complainants.
 - ii. That the complainants had approached the respondent and expressed an interest in booking an apartment in the residential group housing colony developed by the respondent known as "Gurgaon greens" situated in sector 102, prior to making the booking, the allottee had conducted extensive and independent enquiries with regard to the project and it was

- only after the original allottee was fully satisfied about all aspects of the project, that the original allottee took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question.
- iii. That thereafter the allottee, in pursuance of the aforesaid application form, was allotted an independent unit bearing no **GGN-20-0902**, admeasuring 1650 sq. ft., in the project vide provisional allotment letter dated 25.01.2013.
- iv. That the complainants are not "allottees" but investors who have purchased the unit in question as a speculative investment. That it is further submitted that despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. The respondent completed construction and had applied for the occupation certificate on 31.12.2018. Occupation certificate was thereafter issued in favour of the respondent on 30.05.2019. That upon receipt of the occupation certificate, the respondent had offered possession of the unit in question through offer of possession letter dated 31.05.2019 to the complainant. It is respectfully submitted that annexure-1 of offer of possession letter dated 31.05.2019 mentioned the amount to be payable by the complainants and the complainants were called upon to complete certain formalities/documentation so as to enable the respondent to hand over possession of the unit in question.

- v. It is pertinent to mention herein that the complainants being wilful and chronic defaulters having defaulted in timely payment of installments as per the schedule of payments incorporated in the buyer's agreement, were not entitled to any compensation in terms of clause 16(c) of the buyer's agreement. Nevertheless, the respondent has credited compensation amounting to Rs 3,77,149/- against the last installment payable by the complainant on offer of possession, as a gesture of goodwill.
- vi. That thereafter, the complainants obtained possession of the unit in question and unit handover letter dated 27.07.2019 had been duly executed by the complainants. It is submitted that prior to execution of the unit handover letter, the complainants had satisfied themselves regarding the measurements, location, dimension, development etc. of the unit in question. the complainants only after satisfying themselves with all the aspects including shape, size, location etc. of the unit in question, executed the unit handover letter stating that all the liabilities and obligations of respondent as enumerated in the allotment letter/buyer's agreement stood satisfied. Thereafter the conveyance deed bearing vasika no. 5878 dated 28.08.2019 was also registered in favour of the complainants. Therefore, the transaction between the complainant and the respondent has been concluded in August 2019 and the complainants are not left with any claim against the respondent. The present

complaint has been filed as an afterthought and is nothing but a gross misuse of process of law.

- vii. That it is submitted that the respondent has duly fulfilled its contractual obligations under the buyer's agreement and therefore the institution of the present false and frivolous complaint is absolutely unjustified and unwarranted.
- viii. That in so far as payment of compensation/interest to the complainant is concerned, it is submitted that the complainants, being in default, are not entitled to any compensation in terms of clause 16(c) of the buyer's agreement. Furthermore, in terms of clause 16(d) of the buyer's agreement, no compensation is payable due to delay or non-receipt of the occupation certificate, completion certificate and/or any other permission/sanction from the competent authority. Nevertheless, the respondent has credited compensation amounting to Rs 3,77,149/- against the last installment payable by the complainant on offer of possession, as a gesture of goodwill.
- ix. That the complaint is bad for non-joinder of necessary parties. It is submitted that the complainants had availed a housing loan from state bank of India by mortgaging the unit in question. The State Bank of India holds a lien over the unit and as such ought to be impleaded as a party to the proceedings. Thus, it is most respectfully submitted that the prosecution of

the instant complaint in absence of State Bank of India is bad in law.

- x. That the complaint is also bad for non-joinder of complainants' bank which is a necessary party. It is submitted that the complainants had sought relief against the complainants' bank to remove the lien marked over the fixed deposits in favour of respondent without making the said bank as a party in the present complaint. It is respectfully submitted that no relief whatsoever can be granted to the complainants as against the necessary party that has not been arrayed as respondent in the complaint. It is respectfully submitted that the present complaint is liable to be dismissed on this ground also.
- xi. That despite of the facts stated hereinabove, the respondent at the request of the complainants credited an amount of Rs. 3,77,149/- as compensation. Moreover, an amount of Rs. 56,689/- was credited to the complainants on account of anti profiting and Rs. 295/- was credited towards Early Payment Rebate (EPR). The complainants have accepted the aforesaid amount in full and final satisfaction of so-called grievances. It is submitted that the complainants are left with no right and claim against the respondent after receipt of the aforesaid amount. The instant complaint is nothing but a gross misuse of process of law.
- xii. That, without admitting or acknowledging the truth or legality of the allegations advanced by the complainants 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. The provisions of the Act relied upon by the complainants for seeking interest or compensation cannot be called in to aid, in derogation and in negation of the provisions of the buyer's agreement. The complainants cannot claim any relief which is not contemplated under the provisions of the buyer's agreement. Assuming, without in manner admitting any delay on the part of the respondent in delivering possession, it is submitted that the interest for the alleged delay demanded by the complainants is beyond the scope of the buyer's agreement as amended by the transfer documents executed by the parties. The complainant cannot demand any interest or compensation beyond or contrary to the agreed terms and conditions between the parties.

- xiii. That it is evident from the entire sequence of events, that no illegality or lapse can be attributed to the respondent. Thus, the allegations levelled by the complainants qua the respondent are totally baseless and do not merit any consideration by this authority. The present application is nothing but an abuse of the process of law. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

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 complainants being investor

12. The respondent submitted that the complainants are investor and not consumers/allottees, 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. 95,21,437/- 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.1 Delay possession charges

15. 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."

16. Clause 14(a) of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

14. POSSESSION

(a) Time of handing over the Possession

Subject to terms of this clause and barring force majeure conditions, subject to the Allottee having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 36 (Thirty Six) months from the date of start of construction, subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the Company shall be entitled to a grace period of 5 (five) months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project.

17. **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.

18. 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.
19. 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., 12.01.2023 is 8.60%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.60%.
20. **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;"*

21. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.60% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.
22. 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 14(a) of the buyer's agreement executed between the parties on 04.04.2013, the possession of the subject unit to hand over within 36 (Thirty-Six) months from the date of start of construction i.e., 16.06.2013. Therefore, the due date of handing over possession comes out to be 16.06.2016. Occupation certificate was granted by the

concerned authority on 30.05.2019 and thereafter, the possession of the subject unit was offered to the complainants on 31.05.2019. 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., 16.06.2016 till the date of handing over of possession i.e., 27.07.2019. 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 unit and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 04.04.2013 to hand over the possession within the stipulated period.

23. 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. 10.60% p.a. w.e.f. 16.06.2016 till the date of handing over of possession i.e., 27.07.2019, 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.

- G.II Direct the respondent to issue necessary instructions to the complainant's bank to remove lien marked over FD in favour of the respondent on the pretext of future payment of HVAT.**

24. The authority has decided this in the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.** wherein the authority has held that the promoter is entitled to charge VAT from the allottee for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT). However, the promoter cannot charge any VAT from the allottees/prospective buyers for the period 01.04.2014 to 30.06.2017 as the same was to be borne by the promoter-developer only. The respondent-promoter is bound to adjust the said amount, if charged from the allottee with the dues payable by him or refund the amount if no dues are payable by him.

In the present complaint, the respondent has not charged any amount towards HVAT for the period of 01.04.2014 till 30.06.2017, however, vide letter of offer of possession dated 31.05.2019 has demanded lien marked FD of Rs. 2,48,063/- towards future liability of HVAT for liability post 01.04.2014 till 30.06.2017. In light of judgement stated above, the respondent shall not demand the same and the lien so marked be removed. Also, information about the same be sent to the concerned bank by the promoter as well as complainants along with the copy of this order.

H. Directions of the authority

25. 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. 10.60% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 16.06.2016 till the date of offer of possession i.e. 31.05.2019 plus two months or the date of handing over of possession i.e., 27.07.2019 whichever is earlier. 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 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.

26. The complaints stand disposed of.

27. File be consigned to registry.


Sanjeev Kumar Arora
(Member)

Haryana Real Estate Regulatory Authority, Gurugram


Vijay Kumar Goyal
(Member)

Dated: 12.01.2023