

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

First date of hearing: 07.04.2022  
Order reserved on: 27.10.2022  
Order pronounced on: 14.12.2022

Satya Devi and Sham Lal <b>Address:</b> Flat No. D-804, Himachali CGHS Limited, Plot - 8, Sector 3, Dwarka, New Delhi - 110078.	<b>Complainants</b>
Versus	
Emaar MGF Land Limited <b>Address:</b> - Emaar Business Park, MG Road, Sikanderpur Chowk, Sector 28, Gurugram - 122002, Haryana.	<b>Respondent</b>

<b>CORAM:</b>	
Shri Ashok Sangwan	<b>Member</b>
Shri Sanjeev Kumar Arora	<b>Member</b>

**APPEARANCE:**

Shri Rishabh Jain  
Shri Nikhil Mittal

Advocate for the complainants  
Advocate for the respondent

**ORDER**

1. The present complaint dated 04.03.2022 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	<b>Registered vide no. 36(a) of 2017 dated 05.12.2017 for 95829.92 sq. mtrs.</b>
	HRERA registration valid up to	<b>31.12.2018</b>
	HRERA extension of registration vide	<b>01 of 2019 dated 02.08.2019</b>
	Extension valid up to	<b>31.12.2019</b>

6.	Unit no.	GGN-24-0602, 06 <sup>th</sup> floor, building no. 24 [Page 40 of complaint]
7.	Unit measuring	1650 sq. ft.
8.	Provisional allotment letter dated	28.01.2013 [Page 44 of reply]
9.	Date of execution of buyer's agreement	07.05.2013 [Page 37 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	<b>14. POSSESSION</b> <b>(a) Time of handing over the Possession</b> <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 possession of the Unit within <u>36</u></i>

		<p><b><u>(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.</u></b></p> <p>(Emphasis supplied)</p>	
12	Date of start of construction as per statement of account dated 30.09.2019 at page 95 of complaint	21.06.2013	
13	Due date of possession	21.06.2016 [ <b>Note:</b> Grace period is not included]	
14	Total consideration	Rs. 94,16,750 /- as per schedule of payment page 68 of complaint	Rs. 1,01,73,589/- Total consideration as per SOA dated 30.09.2019
15	Total amount paid by the complainants as per statement of account dated 30.09.2019 at page 95 of complaint	Rs.1,02,54,150/-	
16	Occupation certificate	16.07.2019 [Page 167 of reply]	
17	Offer of possession	18.07.2019	

		[page 174 of reply]
13.	Unit handover letter dated	07.09.2019 [page 184 of reply]
14.	Conveyance deed executed on	11.09.2019 [page 188 of reply]
15.	Delay compensation already paid by the respondent in terms of the buyer's agreement as per statement of account dated 30.09.2019 at page 96 of complaint	Rs.4,433/-

## **B. Facts of the complaint**

3. The complainants have made the following submissions in the complaint:
- i. The complainants, Mrs Satya Devi and Mr Sham Lal (hereinafter referred to as "complainants"), are peace loving and law-abiding citizens of India, who nurtured hitherto an unrealized dream of having their own unit with all legal and lawful formalities and approvals in upcoming group housing colony with all facilities and standards, situated around serene and peaceful environment. The complainants always lead their life with full of honesty, simplicity and truthfulness and epitomize utmost kindness and humanism.
  - ii. The complainants have paid the complete payments to the respondent, as and when demanded by the respondent. Total sale

consideration of the unit inclusive of EDC, IDC, Car Parking, Club Membership, IFMS, PLC for Joggers Park Facing and for central greens, additional charges, taxes and cess etc. have been paid. The respondent has not paid the delay possession charges to the complainants since 7th May, 2016, the actual legal date of possession till 7th September, 2019, i.e. the date of handing over the possession of the said unit.

- iii. The original allottee was approached by the sale representatives of respondent, who made tall claims about the project 'Gurgaon greens' as the world class project. The original allottee was invited to the sales office and was lavishly entertained and promises were made to him that the possession of his unit would be handed over in time including that of parking, horticulture, club and other common areas. The original allottee was impressed by their oral statements and representations and ultimately lured to pay Rs.7,50,000/- via cheque no 447433 dated 24th January, 2012 as booking amount, to the respondent, for booking a unit in its group housing colony known as "Gurgaon greens" situated at sector 102.
- iv. The buyer's agreement was executed between the original allottee and the respondent on 7th may, 2013 for purchasing the unit no. ggn-24-0602, located on 6th floor, tower/building no. 24 having a super area of 1650 square feet with the exclusive right to use the car parking space, paid for by the original allottee and as may be earmarked by the respondent, for a total consideration of rs.97,68,650/- inclusive of EDC & IDC amounting Rs.5,70,900/-,

interest free maintenance security (IFMS) amounting Rs.82,500/-, preferential location charges (PLC) & additional charges for joggers park facing amounting Rs.3,30,000/- and for central greens amounting Rs.4,95,000/-, club membership charges amounting rs.50,000/-car parking charges amounting rs.3,00,000/-, taxes amounting Rs.3,51,900/- in the group housing colony "Gurgaon greens" situated at sector 102.

- v. That the nomination letter dated 28th July, 2015 was issued by the respondent to the complainants Mrs Satya Devi and Mr. Sham Lal, for unit no. ggn-24-0602 situated in the group housing colony "Gurgaon greens", which was endorsed in favour of the complainants. the respondent confirmed that the nomination formalities are completed for the said unit and at the time, the respondent had received a total sum of Rs.48,82,240/- for the said unit. the respondent further demanded Rs.6,31,001/- as the next instalment from the complainants.
- vi. The respondent issued handover advice letter of unit no. ggn-24-0602 situated at "Gurgaon greens" to the complainants on 22nd August 2019, which states that the unit is ready for the handover of physical possession to the complainants. The total consideration for the allotted unit is Rs.1,01,73,590/- inclusive of all taxes, EDC and IDC club membership, interest free maintenance charges, car parking charges, preferential location charges for joggers park facing and central greens and additional charges etc. the complainants made all payments timely as and when demanded by



the respondent and, in total, paid a sum of Rs.1,02,54,150/- i.e. more than 100% (more than hundred per cent) payable amount, as and when demanded by the respondent.

- vii. The complainants hereby seek to redress the various forms of legal omissions and illegal commissions perpetuated by the respondent, which amounts to unfair trade practices, breach of contract and are actionable under the real estate (regulation and development) act, 2016. In the present circumstances, the complainants have been left with no other options but approach and seek justice at the Haryana real estate regulatory authority at Gurugram, Haryana.

**C. Relief sought by the complainants:**

4. The complainants have sought following relief(s):
- i. Direct the respondent to pay interest for every month of delay in offering the possession of the unit.
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 07.05.2013, 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 are estopped by their own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. It is submitted that the complainants have already obtained possession of the unit in question and have, further, executed a conveyance deed dated 11.09.2019 regarding the unit in question. The transaction between the complainants and the respondent stands satisfied. The reliefs sought in the false and frivolous complaint are barred by estoppel. That the instant complaint is sham and bogus. That the complainants have not come before this authority with clean hands and have suppressed vital and material facts from this authority, hence, the complaint deserves to be dismissed at the very threshold. The correct facts are set out in the succeeding paras of the present reply.
- iii. 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 are beyond the purview of this authority and can only be adjudicated by the adjudicating officer/civil court. The present complaint deserves to be dismissed on this ground alone. That the instant complaint is barred by limitation. the complainants have alleged that the respondent was obligated to offer possession of the unit in question by May, 2016 and by way of the instant complaint have sought interest for indemnifying them for the alleged delay in delivery of the unit in question. It is submitted that cause of action, if any, for seeking interest accrued in favour of the complainants in 2016 and consequently the instant complaint is barred by limitation.

- iv. That Mr. Dewan Chand (hereinafter "original allottee") 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 original allottee 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.

- v. That thereafter the original allottee, in pursuance of the aforesaid application form, was allotted an independent unit bearing no **ggn-24-0602**, tower 24, 6<sup>th</sup> floor, admeasuring 1650 sq. ft., in the project vide provisional allotment letter dated 28.01.2013. 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 he shall remit every installment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the original allottee and proceeded to allot the unit in question in his favor. That thereafter, buyer's agreement dated 07.05.2013 was executed between the original allottee. That thereafter, the original allottee executed an agreement to sell dated 25.06.2015 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. It is pertinent to mention that the complainants further executed an affidavit dated 16.07.2015 and an indemnity cum undertaking dated 16.07.2015 whereby complainants had consciously and voluntarily declared and affirmed that they would be bound by all the terms and conditions of the provisional allotment in favour of the original allottee. It was further declared by the complainants that having been substituted in the place of the original allottee, they are 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. Furthermore, the respondent, at the time of endorsement of the unit in question, had specifically indicated to the 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 the complainants that on account of the defaults of the original allottee, the complainants would not be entitled to any compensation for delay, if any. The said position was duly accepted and acknowledged by the 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 have 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.

- vi. That in the manner as aforesaid, the complainants stepped into the shoes of the original allottee. Further, the respondent issued the nomination letter dated 28.07.2015 in favour of the complainants. That it is pertinent to mention that the original



allottee as well as the complainants were irregular in payment of instalments. The respondent was constrained to issue reminder letters, notices, payment requests letters to the original allottee as well as the complainants requesting them to make payment of demanded amounts. payment request letters, notices etc, are annexed herewith as annexure r-10 (colly), had been got sent to the original allottee by the respondent clearly mentioning the amount that was outstanding and the due date for remittance of the respective amounts as per the schedule of payments, requesting the original allottee to timely discharge his outstanding financial liability but to no avail. That the complainants are not an "allottees" but investors who have booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale. the apartment in question has been booked by the complainants as a speculative investment and not for the purpose of self-use as their residence. therefore, no equity lies in favour of the complainants.

- vii. That it is submitted that even the complainants consciously and maliciously chose to ignore the payment request letters and reminders issued by the respondent and flouted in making timely payments of the instalments which was an essential, crucial and an indispensable requirement under the buyer's agreement. 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 and further causes enormous business losses to the respondent. the complainants chose to ignore all these aspects and wilfully defaulted in making timely payments. It is submitted that the respondent despite defaults of several allottees earnestly fulfilled its obligations under the buyer's agreement and completed the project as expeditiously as possible in the facts and circumstances of the case. Therefore, there is no equity in favour of the complainant.

- viii. That is respectfully submitted that the rights and obligations of the complainants as well as the respondent are completely and entirely determined by the covenants incorporated in the buyer's agreement which continues to be binding upon the parties thereto with full force and effect. Clause 14 of the buyer's agreement provides that subject to the terms of this clause and barring force majeure conditions and subject to the allottees having complied with all the terms and conditions of the agreement, and not being in default of the same, and compliance with all provisions, formalities, documentation etc., the possession of the unit would be handed over within 36 months plus grace period of 5 months, from the date of start of construction. It is further provided in the buyer's agreement that time period for delivery of possession shall stand extended on the occurrence of delay for reasons beyond the control of

the respondent. Furthermore, it is categorically expressed in clause 14(b)(v) that in the event of any default or delay in payment of instalments as per the schedule of payments incorporated in the buyer's agreement, the time for delivery of possession shall also stand extended. It is submitted that the complainants have defaulted in timely remittance of the instalments and hence the date of delivery option is not liable to determine the matter sought to be done by the complainants. The complainants are conscious and aware of the said agreement and has filed the present complaint to harass the respondent and compel the respondent to surrender to their illegal demands. It is submitted that the filing of the present complaint is nothing but an abuse of the process of law.

- ix. That clause 16 of the buyer's agreement further 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. in case of delay caused due to non- receipt of occupation certificate, completion certificate or any other permission/sanction from the competent authorities, no compensation or any other compensation shall be payable to the allottees. that the complainants, having defaulted in payment of instalments, are thus not entitled to any compensation or any amount towards interest under the





buyer's agreement. it is submitted that the complainants by way of instant complaint is demanding interest for alleged delay in delivery of possession. the interest is compensatory in nature and cannot be granted in derogation and ignorance of the provisions of the buyer's agreement.

- x. That 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 had applied for occupation certificate on 11.02.2019. The occupation certificate was thereafter issued in favour of the respondent vide memo bearing no. zp-835/ad(ra)/2018/16816 dated 16.07.2019. It is pertinent to note that once an application for grant of occupation certificate is submitted for approval in the office of the concerned statutory authority, the respondent ceases to have any control over the same. the grant of sanction of the occupation certificate is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence. as far as the respondent is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authority for obtaining of the occupation certificate. No fault or lapse can be attributed to the respondent in the facts and circumstances of the case. Therefore, the time period utilised by the statutory authority to grant occupation certificate to the respondent is necessarily required to be



excluded from computation of the time period utilised for implementation and development of the project.

- xi. 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. 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 complainants for seeking interest cannot be called in to aid in derogation and ignorance of the provisions of the buyer's agreement. the interest is compensatory in nature and cannot be granted in derogation and ignorance of the provisions of the buyer's agreement. It is further submitted that the interest for the alleged delay demanded by the complainants is beyond the scope of the buyer's agreement. the complainants cannot demand any interest or compensation beyond the terms and conditions incorporated in the buyer's agreement.
- xii. That without prejudice to the contentions of the respondent, it is submitted that the allegations of the complainants that possession was to be delivered by May, 2016 are wrong, malafide and result of afterthought in view of the fact that the

complainants had made several payments to respondent even after May, 2016. In fact, the last payment was received from the complainants in September, 2019. It is submitted that if there was a delay in delivery of project as alleged by the complainants, then the complainants would not have remitted instalments after May, 2016. The allegations put forth by the complainants qua the respondent are absolutely illogical, irrational and irreconcilable in the facts and circumstances of the case. It is further reiterated that the alleged due date of proposed handover of possession is misconceived.

- xiii. That the complainants were offered possession of the said unit in question through letter of offer of possession dated 18.07.2019 (**annexure r-16**). That an indemnity cum undertaking for possession dated 14.08.2019 (**annexure r-17**) was also executed by the complainants. the complainants were called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit in question to the complainants. However, the complainants approached the respondent with request for payment of compensation for the alleged delay in utter disregard of the terms and conditions of the buyer's agreement. The respondent explained to the complainants they are not entitled to any compensation in terms of the buyer's agreement on account of default in timely remittance of instalments as per schedule of

payment incorporated in the buyer's agreement. The respondent earnestly requested the complainants to obtain possession of the unit in question and further requested the complainants to execute a conveyance deed in respect of the unit in question after completing all the formalities regarding delivery of possession. However, the complainants did not pay any heed to the legitimate, just and fair requests of the respondent and threatened the respondent with institution of unwarranted litigation. the respondent in order to settle the unwarranted controversy needlessly instigated by the complainants proceeded to credit an amount of Rs. 76,038/- as benefit on account of anti-profiting. moreover, due to the good reputation and a goodwill of the respondent in the real estate sector, the respondent even credited an amount to the tune of Rs. 4,433/- as early payment rebate (EPR) in full and final satisfaction of their alleged grievances. Without prejudice to the rights of the respondent, delayed interest if any has to be calculated only on the amounts deposited by the allottees/complainants towards the basic principle amount of the unit in question and not on any amount credited by the respondent, or any payment made by the allottees/complainants towards delayed payment charges (DPC) or any taxes/statutory payments etc.

- xiv. That after receipt of the aforesaid amount, the complainants approached the respondent requesting it to deliver the



possession of the unit in question. A unit handover letter dated 07.09.2019 **(annexure R-18)** was executed by the complainants, specifically and expressly agreeing that the liabilities and obligations of the respondent as enumerated in the allotment letter or the buyer's agreement stand satisfied. The complainants have intentionally distorted the real and true facts in order to generate an impression that the respondent has reneged from its commitments. No cause of action has arisen or subsists in favour of the complainants to institute or prosecute the instant complaint. The complainants have preferred the instant complaint on absolutely false and extraneous grounds in order to needlessly victimise and harass the respondent.

- xv. That it is pertinent to mention that after execution of the unit handover letter dated 07.09.2019 and obtaining of possession of the unit in question, the complainants are left with no right, entitlement or claim against the respondent. It needs to be highlighted that the complainants have further executed a conveyance deed dated 11.09.2019 **(annexure r-19)** in respect of the unit in question. The transaction between the complainants and the respondent stands concluded and no right or liability can be asserted by the respondent or the complainants against the other. That in addition thereto, the complainants have admitted their obligation to discharge their Hvat liability there under. It is pertinent to take into reckoning

that the complainants have obtained possession of the unit in question and have executed conveyance deed in respect thereof. The instant complaint is a gross misuse of process of law. The contentions advanced by the complainants in the false and frivolous complaint are barred by estoppel.

- xvi. That the complainants have preferred the instant complaint in complete contravention of their earlier representations and documents executed by them. The complainants have filed the instant false and frivolous complaint in order to mount undue pressure upon respondent in order to make it succumb to their unjust and illegitimate demands. That it is submitted that several allottees, including the complainants, have defaulted in timely remittance of payment of installments which was an essential, crucial and an indispensable requirement for conceptualisation 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. It is submitted that the construction of the tower in which the unit in question is situated is



complete and the respondent has already offered possession of the unit in question to the complainants. Therefore, there is no default or lapse on the part of the respondent and there is no equity in favour of the complainants. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainants are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

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.I Objection regarding entitlement of DPC on ground of complainants being investor**

12. The respondent submitted that the complainants are investor and not consumer/allottee, thus, the complainants are not entitled to the protection of the Act and thus, the present complaint is not maintainable.
13. The authority observes that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of

interpretation that preamble is an introduction of a statute and states main aims and objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that under section 31 of the Act, any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement, it is revealed that the complainants are an allottees/buyers and they have paid total price of Rs. 1,01,80,810/- 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. 000600000010557 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.

**F.II Whether signing of unit hand over letter extinguishes the right of the allottees to claim delay possession charges.**

15. The respondent contended that at the time of taking possession of the subject unit vide unit hand over letter dated 07.09.2019 the complainants have certified themselves to be fully satisfied with regard to the measurements, location, direction, developments et cetera of the unit and also admitted and acknowledge that they do not have any claim of any nature whatsoever against the respondent and that upon acceptance of possession, the liabilities and obligations of the respondent as enumerated in the allotment letter/buyer's agreement, stand fully satisfied. The relevant para of the unit handover letter relied upon reads as under:

*"The Allottee, hereby, certifies that he / she has taken over the peaceful and vacant physical possession of the aforesaid Unit after fully satisfying himself / herself with regard to its measurements, location, dimension and development etc. and hereafter the Allottee has no claim of any nature whatsoever against the Company with regard to the size, dimension, area, location and legal status of the aforesaid Home.*

*Upon acceptance of possession, the liabilities and obligations of the Company as enumerated in the allotment letter/Agreement executed in favour of the Allottee stand satisfied."*

16. In the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.**, the authority has comprehensively dealt with this issue and has held that the aforesaid unit handover letter does not preclude the complainants from exercising their right to claim delay possession charges as per the provisions of the Act.

In light of the aforesaid order, the complainants are entitled to delay possession charges as per provisions of the Act despite signing of indemnity or unit handover letter.

**G. Findings on the relief sought by the complainants:**

G. I Delay possession charges

17. 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."*

18. 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.***

19. **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.*

20. 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.
21. 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., 14.12.2022 is 8.35%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.35%.
22. **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;"*
23. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.35% by the respondent/





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

24. 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 07.05.2013, the possession of the subject unit to hand over within 36 (Thirty-Six) months from the date of start of construction i.e., 21.06.2013. Therefore, the due date of handing over possession comes out to be 21.06.2016. Occupation certificate was granted by the concerned authority on 18.07.2019 and thereafter, the possession of the subject unit was offered to the complainants on 18.07.2019. 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., 21.06.2016 till the date of handing over of possession i.e., 07.09.2019. 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 07.05.2013 to hand over the possession within the stipulated period.



25. 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. 10.35% p.a. w.e.f. 21.06.2016 till the date of handing over of possession i.e., 07.09.2019 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.

**H. Directions of the authority**

26. 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. 10.35% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 21.06.2016 till the date of handing over of possession i.e., 07.09.2019. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per rule 16(2) of the rules.
- ii. The respondent shall not levy/recover any charge 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.

27. The complaints stand disposed of.

28. File be consigned to registry.

  
Sanjeev Kumar Arora  
(Member)

  
Ashok Sangwan  
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.12.2022