

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

**Complaint no. : 1198 of 2022**  
**Complaint filed on : 24.03.2022**  
**First date of hearing : 31.05.2022**  
**Date of decision : 03.05.2023**

1. Abhinav Girohtra  
2. Rajesh Girohtra  
Both RR/o: 3, Civil Lines Enclave, Gurgaon, Haryana.

**Complainants**

**Versus**

1. M/s Emaar MGF Land Ltd.  
2. M/s Brijbasi Projects Pvt Ltd.  
Both address at: 306-308, Square One, C-2, District  
Centre, Saket, New Delhi, South Delhi-110017.

**Respondent**

**CORAM:**

Shri Ashok Sangwan  
Shri Sanjeev Kumar Arora

**Member**  
**Member**

**APPEARANCE:**

Sri Sanjeev Sharma  
Shri Dhruv Rohatgi

Advocate for the complainants  
Advocate for the respondent

**ORDER**

1. The present complaint has been filed by the complainants/allottees in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter se them.

**A. Project and unit related details**

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

S. No.	Heads	Information
1.	Project name and location	The Palm Terraces Select, Sector 66, Gurugram, Haryana
2.	Project area	45.373 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	a. 228 of 2007 dated 27.09.2007 Valid/renewed up to 26.09.2019 b. 93 of 2008 dated 12.05.2008 Valid/renewed up to 11.05.2020 c. 50 of 2010 dated 24.06.2010 Valid/renewed up to 23.06.2020
5.	HRERA registered/ not registered	<b>Registered "The Palm Terraces Select" vide no. 19 of 2018 dated 01.02.2018</b>
	HRERA registration valid up to	W.e.f. 01.02.2018 till 30.04.2018
	Registration extension granted on	No. RC/REP/HARERA/GGM/2018/19 EXT-3 dated 08.10.2018
	Extension granted till	30.04.2019
6.	Occupation certificate granted on	25.01.2018 [annexure R7, page 113-114 of reply]
7.	Provisional allotment letter in favour of the complainants	20.12.2010 [annexure R2, page 44 of reply]
8.	Unit no. and measuring	PTS-04-0602, 6 <sup>th</sup> floor, tower 4 measuring 2410 sq. ft. [annexure R4, page 51 of reply]
9.	Date of execution of buyer's agreement	20.01.2011 [annexure R4, page 49 of reply]



10.	Possession clause	<p><b>14. POSSESSION</b></p> <p><b>(a) Time of handing over the Possession</b></p> <p>Subject to terms of this clause and the Allottee(s) 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 upon complying with all provisions, formalities, documentation etc., as prescribed by the Developer, the Developer shall make all efforts to handover possession of the Unit (which falls within ground plus four floors tower, buildings) within a period of thirty (30) months from the date of commencement of construction, and for the Unit (which falls within ground plus thirteen floors tower/building) <u>within a period of thirty six (36) months from the date of start of construction</u>, subject to certain limitations as may be provided in this Agreement and timely compliance of the provisions of this Agreement by the Allottee(s). The Allottee(s) agrees and understands that the Developer shall be entitled to a <b>grace period of three (3) months, for applying and obtaining the occupation certificate in respect of the Unit and/or the Project.</b></p> <p>(Emphasis supplied) [annexure R4, page 67 of reply]</p>
11.	Date of start of construction as per statement of account dated 09.03.2018 at page 120 of complaint	31.07.2012
12.	Due date of possession	31.07.2015

		[ <b>Note:</b> Grace period is not included]	
13.	Total consideration	As per statement of account dated 09.03.2018 at page 120 of reply	As per payment plan annexed with the buyer's agreement
		Rs. 1,94,09,209/-	Rs.1,86,29,195/-
14.	Total amount paid by the complainants as per the calculation sheet at page 111 of reply	Rs. 1,85,35,111/-	
15.	<b>Date of offer of possession to the complainants</b>	09.03.2018 [annexure R7, page 115-128 of reply]	
16.	Unit handover dated	05.04.2019 [annexure R9, page 129 of reply]	
17.	Conveyance deed executed on	16.05.2019 [annexure R10, page 130-160 of reply]	

**B. Facts of the complaint**

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

- i. That upon the representation by the respondent no. 1 and advertisement done in said behalf, the respondent no. 1 was to construct a group housing residential complex namely "**PALM TERRACES SELECT**" on parcel of land measuring 37.708 acres and additional land admeasuring 7.665 acres located at village Badshahpur, Gurgaon, Haryana for which the respondent no.1 was granted license no. 50 of 2010 dated 24.06.2010 by the DTCP vide memo no. DS-2007/24799 dated 27.09.2007; 93/2008 dated 12.05.2008.

- ii. That the complainants are the original allottees/purchasers wherein the complainants showed the interest in purchasing a unit with the respondent no. 1 and made a payment of Rs. 10,00,000/- in favour of the respondent no. 1 on 06.12.2010 upon which the respondent no. 1 issued provisional allotment letter dated 25.12.2010 in favour of the complainants wherein unit no. PTS-04-0602, admeasuring 2410 sq. ft. in the project "**PALM TERRACES SELECT**", floated by the respondent no. 1 was allotted to the complainants upon the inducement that the possession of the unit purchased shall be handed over on time with all amenities as promised.
- iii. That the complainants and the respondents entered into the buyer's agreement on 20.06.2011 for unit no. PTS-04-0602, tower 04, admeasuring 2410 sq. ft. having 2 reserved car parking @ Rs. 3,00,000/- each for a total sale consideration of Rs. 1,91,81,722/-. Clause 14(a) of the agreement provides handing over possession within 36 months from the date of start of construction however, since the said fact is unknown, the date of possession is calculated from the date of the buyer's agreement which comes out to be 20.06.2014.
- iv. That the complainants have made a total payment of Rs. 1,85,35,111/- between December 2010 to December 2018 as and

when demanded by the respondent without any delay as the subject unit was booked under subvention payment plan.

- v. That despite making the payment of the aforementioned amount, the possession of the unit in question was offered on 11.10.2018 without any interest on the delay possession by the respondent no. 1 despite the fact that the possession was to be handed in June 2014.
- vi. That the complainants seek indulgence of the Hon'ble Authority in grant of possession along with delay possession interest by the respondent no. 1 as per proviso to section 18(1) of the Act. The complainants have invoked the jurisdiction of the authority under section 18 read with section 31 of the Act.

**C. Relief sought by the complainants**

4. The complainants are seeking the following relief:
  - i. Direct the respondent to handover the possession of the unit.
  - ii. Direct the respondent to pay interest at prescribed rate for the delayed period of handing over possession.

**D. Reply filed by the respondent no.1**

5. The respondent no.1 had contested the complaint on the following grounds:
  - i. That the complainants are not "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.

- ii. That the complainants approached the respondent no. 1 and expressed interest in booking of an apartment in the residential group housing colony developed by respondent no. 1 known as "**Palm Terraces Select**" situated in Sector 66, Badshahpur, Tehsil & District Gurgaon. Prior to the booking, the complainants conducted extensive and independent enquiries with regard to the project, only after being fully satisfied on all aspects, that they took an independent and informed decision, uninfluenced in any manner by the respondent no. 1, to book the unit in question.
- iii. That thereafter the complainants vide an application form dated 30.11.2010 applied to the respondent no. 1 for provisional allotment of the unit. Pursuant thereto, unit bearing no **PTS-04-0602**, tower-4, was allotted vide provisional allotment letter dated 20.12.2010. The complainants consciously and willfully opted for a construction linked payment plan for remittance of sale consideration for the unit in question and further represented to the respondent no. 1 that they shall remit every installment on time as per the payment schedule. The respondent no. 1 had no reason to suspect the bonafide of the complainants and proceeded to allot the unit in question in their favor. Accordingly, the complainants undertook to be bound by the terms and conditions of the application form/allotment letter.

- iv. That thereafter, a buyer's agreement dated 20.01.2011 was executed between the complainants and the respondent no. 1. It is pertinent to mention that the buyer's agreement was consciously and voluntarily executed between the parties.
- v. That since, the complainants were irregular in payment of instalments, the respondent no. 1 was constrained to issue reminders and letters to the complainants requesting them to make payment of demanded amounts. Payment request letters, reminders etc. annexed as Annexure R-5 (colly). The payments request letter and reminders thereof were sent to the complainants by the respondent no. 1 clearly mentioning the outstanding amount and the due date for remittance of the respective amounts as per the schedule of payments, requesting them to timely discharge their outstanding financial liability but to no avail. That the calculation sheet correctly maintained by the respondent no. 1 in due course of its business depicts the delay in remittance of various payments by the complainants.
- vi. That the complainants consciously and maliciously chose to ignore the payment request letters and reminders issued by the respondent no. 1 and flouted in making timely payments of the instalments which was 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 no. 1. The complainants chose to ignore all these aspects and wilfully defaulted in making timely payments. The respondent no. 1, 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 complainants.

- vii. That the rights and obligations of the complainants as well as the respondent no. 1 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 allottees having complied with all the terms and conditions of the agreement, and not being in default of the same, possession of the unit (which falls within ground plus four floors tower/building) would be handed over within 30 months from the date of commencement of construction and for the units (which falls within ground plus thirteen floors tower/building) would be handed over within 36 months from the date of commencement of construction plus grace period of 3 months. 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 no. 1. Furthermore, it is categorically expressed in clause 14(b)(vi) 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.

- viii. That clause 16 of the buyer's agreement provides that compensation for any delay in delivery of possession shall only be given to such allottees who are not in default of their obligations envisaged under the agreement and who have not defaulted in payment of instalments as per the payment plan incorporated in the agreement. 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. 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 are 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.
- ix. That despite there being a number of defaulters in the project, the respondent no. 1 had to infuse funds into the project and have diligently developed the project in question. The respondent no. 1 applied for occupation certificate on 30.06.2017 and the same was thereafter issued vide memo bearing no. ZP-308-Vol-I/SD(BS)/2018/3486 dated 25.01.2018. 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, respondent no. 1 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 no. 1 cannot exercise any influence. As far as the respondent no. 1 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 no. 1 in the facts and circumstances of the case. Therefore, the time period utilised by the statutory authority to grant occupation certificate to the respondent no. 1 is necessarily required to be excluded from computation of the time period utilised for implementation and development of the project.

- x. 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. 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 submitted that the interest for the alleged

delay or compensation demanded by the complainants is beyond the scope of the buyer's agreement and the same cannot be demanded by the complainants being beyond the terms and conditions incorporated in the buyer's agreement.

- xi. That the construction of the project/allotted unit in question already stands completed and the respondent no. 1 has already offered possession of the unit in question to the complainants and the conveyance deed has also been executed. The transaction between the parties is a concluded contract and as such no right to sue survives.
- xii. That the complainants were offered possession of the unit in question through letter of offer of possession dated 09.03.2018. 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. It is submitted that many possession reminders were sent to the complainants, but to no avail. However, the complainants approached the respondent no. 1 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 no. 1 explained to the complainants that 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 no. 1 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 no. 1 and threatened the respondent no. 1 with institution of unwarranted litigation. It is pertinent to mention that the respondent no. 1 credited an amount of Rs.1,00,000 as compensation, a sum of Rs. 1,92,320/- towards EDC interest. Further an amount of Rs. 44,050 was credited towards Anti-Profiting. Without prejudice to the rights of the respondent no. 1, 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 no. 1, or any payment made by the allottees/complainants towards Delayed Payment Charges (DPC) or any Taxes/Statutory payments etc.

- xiii. That the complainants did not have adequate funds to remit the balance payments requisite for obtaining possession in terms of the buyer's agreement and consequently in order to needlessly

linger on the matter, the complainants refrained from obtaining possession of the unit in question.

- xiv. That subsequently, the complainants approached the respondent no. 1 requesting it to deliver the possession of the unit in question. A unit handover letter dated 05.04.2019 was executed by the complainants, specifically and expressly agreeing that the liabilities and obligations of the respondent no. 1 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 no. 1 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.
- xv. That the complainants have further executed a conveyance deed dated 16.05.2019 in respect of the unit in question. The transaction between the complainants and the respondent no. 1 stands concluded and no right or liability can be asserted by the respondent no. 1 or the complainants against the other.
- xvi. 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 no. 1. The respondent no. 1, 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 no. 1 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 no. 1 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 no. 1. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

6. The respondent no. 1 filed reply on 03.06.2022. However, neither respondent no. 2 put in appearance nor plead any reply. The counsel for the complainant stated that the complainant does not seek any relief against the respondent no.2. Copies of all the documents have been filed and placed on record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.

**E. Jurisdiction of the authority**

7. 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**

8. 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**

9. Section 11(4)(a) of the Act 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) The promoter shall-

- (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;*

**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.*

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

**F. Findings on the objections raised by the respondent**

**F.I Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act and provisions of the Act are not retrospective in nature**

11. The respondent raised an objection that the provisions of the Act are not retrospective in nature and the provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into force of the Act. 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. 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 Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 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.”
12. 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-

“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.”

13. 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 buyer's 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 the Act, rules and regulations made thereunder and are not unreasonable or exorbitant in nature.

**F.II Objection regarding non entitlement of any relief under the Act to the complainants being investors**

14. It is pleaded on behalf of respondent that complainants are not "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 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 the preamble is an introduction of a statute and states the main aims and objects of enacting a statute but at the same time, the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he 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 buyers and have paid a considerable amount towards purchase of subject unit. At this stage, it is important to stress upon the definition of the term allottee under the Act, and 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."*

15. In view of above-mentioned definition of allottee as well as the terms and conditions of the buyer's agreement executed between the parties, it is crystal clear that the complainants are allottees as the subject unit allotted to them by the respondent/promoter. The concept of investor is not defined or referred in the Act of 2016. As per definition 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) Ltd. 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 allottees being an investor are not entitled to protection of this Act also stands rejected.

**F.III Objection regarding exclusion of time taken by the competent authority in processing the application and issuance of occupation certificate**

16. As far as contention of the respondent with respect to the exclusion of time taken by the competent authority in processing the application and issuance of occupation certificate is concerned, the authority observed that the respondent had applied for grant of occupation certificate on 01.07.2017 and thereafter vide memo no. ZP-308-Vol.-I/SD(BS)/2018/3486 dated 25.01.2018, the occupation certificate has been granted by the competent authority under the prevailing law. The authority cannot be a silent spectator to the deficiencies in the application submitted by the promoter for issuance of occupancy certificate. It is evident from the occupation certificate dated 25.01.2018 that an incomplete application for grant of OC was applied on 01.07.2017 as fire NOC from the competent authority was granted only on 28.12.2017 which is subsequent to the filing of application for occupation certificate. Also, the Chief Engineer-I, HSVP, Panchkula has submitted his requisite report in respect of the said project on 16.11.2017 and 27.10.2017. The District Town Planner, Gurugram and Senior Town Planner, Gurugram has submitted requisite reports' about this project on 04.09.2017 and 04.09.2017 respectively. As such, the application submitted on 01.07.2017 was incomplete and an incomplete application is no application in the eyes of law.

17. The application for issuance of occupancy certificate shall be moved in the prescribed forms and accompanied by the documents mentioned in sub-code 4.10.1 of the Haryana Building Code, 2017. As per sub-code 4.10.4 of the said Code, after receipt of application for grant of occupation certificate, the competent authority shall communicate in writing within 60 days, its decision for grant/ refusal of such permission for occupation of the building in Form BR-VII. In the present case, the respondent has completed its application for occupation certificate only on 28.12.2017 and consequently the concerned authority has granted occupation certificate on 25.01.2018. Therefore, in view of the deficiency in the said application dated 01.07.2017 and aforesaid reasons, no delay in granting occupation certificate can be attributed to the concerned statutory authority.

**F.IV Whether signing of unit hand over letter or indemnity-cum-undertaking at the time of possession extinguishes the right of the allottee to claim delay possession charges.**

18. The respondent contended that at the time of taking possession of the subject flat vide unit hand over letter dated 05.04.2019, the complainants had certified that upon acceptance of possession, the liabilities and obligations of the respondent as enumerated in the allotment letter/buyer's agreement, stand fully satisfied.
19. 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 unit handover letter and indemnity cum

undertaking executed at the time of taking possession, does not preclude the allottees from exercising their right to claim delay possession charges as per the provisions of the Act.

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

**F.V Whether the execution of the conveyance deed extinguishes the right of the allottee to claim delay possession charges**

21. The respondent submitted that the complainants have executed the conveyance deed on 16.05.2019 and therefore, the allottee cannot seek relief of DPC after having executed the conveyance deed in terms of para no. 24 of the reply. The transaction between the complainants and the respondent have been concluded and no right or liability can be asserted by respondent or the complainants against the other. Therefore, the complainants are estopped from claiming any interest in the facts and circumstances of the case. The present complaint is nothing but a gross misuse of process of law.
22. 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 taking over the possession and thereafter execution of the conveyance deed can best be termed as respondent having discharged its liabilities as per the buyer's agreement and upon taking possession, and/or executing conveyance deed, the

complainants never gave up their statutory right to seek delayed possession charges as per the provisions of the said Act.

23. Also, the same view has been upheld by the Hon'ble Supreme Court in case titled as **Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd. (now Known as BEGUR OMR Homes Pvt. Ltd.) and Ors. (Civil appeal no. 6239 of 2019) dated 24.08.2020**, the relevant paras are reproduced herein below:

- "34 The .....On the contrary, the tenor of the communications indicates that while executing the Deeds of Conveyance, the flat buyers were informed that no form of protest or reservation would be acceptable. The flat buyers were essentially presented with an unfair choice of either retaining their right to pursue their claims (in which event they would not get possession or title in the meantime) or to forsake the claims in order to perfect their title to the flats for which they had paid valuable consideration. In this backdrop, the simple question which we need to address is whether a flat buyer who seeks to espouse a claim against the developer for delayed possession can as a consequence of doing so be compelled to defer the right to obtain a conveyance to perfect their title. It would, in our view, be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, the purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance to forsake the right to claim compensation. This basically is a position which the NCDRC has espoused. We cannot countenance that view.
35. The flat purchasers invested hard earned money. It is only reasonable to presume that the next logical step is for the purchaser to perfect the title to the premises which have been allotted under the terms of the ABA. But the submission of the developer is that the purchaser forsakes the remedy before the consumer forum by seeking a Deed of Conveyance. To accept such a construction would lead to an absurd consequence of requiring the purchaser either to abandon a just claim as a condition for obtaining the conveyance or to indefinitely delay the execution of the Deed of Conveyance pending protracted consumer litigation."



24. Therefore, in furtherance of **Varun Gupta V/s Emaar MGF Land Ltd. (supra)** and the law laid down by the hon'ble Apex Court in the **Wg. Cdr. Arifur Rahman (supra)**, this authority holds that even after execution of the conveyance deed, the complainants cannot be precluded from their right to seek delay possession charges from the respondent-promoter.

**G. Findings of the authority**

**G.I Possession and delay possession charges**

25. **Relief sought by the complainants:** Direct the respondent to handover the possession of the unit and to pay interest at prescribed rate for the delayed period of handing over possession.
26. In the present complaint, the complainants intend to continue with the project and are 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."*

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

**"14. POSSESSION**

**(a) Time of handing over the Possession**

*Subject to terms of this clause and the Allottee(s) 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 upon complying with all provisions, formalities, documentation etc., as prescribed by the Developer, the Developer shall make all efforts to handover possession of the Unit (which falls within ground plus four floors tower, buildings) within a period of thirty (30) months from the date of commencement of construction, and for the **Unit (which falls within ground plus thirteen floors tower/building) within a period of thirty six (36) months from the date of start of construction**, subject to certain limitations as may be provided in this Agreement and timely compliance of the provisions of this Agreement by the Allottee(s). The Allottee(s) agrees and understands that the Developer shall be entitled to a **grace period of three (3) months, for applying and obtaining the occupation certificate in respect of the Unit and/or the Project.**" (Emphasis supplied).*

28. **Due date of handing over possession and admissibility of grace period:** As per occupation certificate dated 25.01.2018, the tower PTS-04 wherein the subject unit falls has ground floor to 9<sup>th</sup> floor. The promoter has proposed to hand over the possession of the said unit within 36 (thirty-six) months from the date of commencement of construction and further provided in agreement that promoter shall be entitled to a grace period of 3 months for applying and obtaining occupation certificate in respect of said unit. The date of start of construction is 31.07.2012 as per statement of account dated 09.03.2018. The period of 36 months expired on 31.07.2015. As a matter of fact, the promoter has not applied to the concerned authority for obtaining occupation certificate within the time limit (36 months) prescribed by the promoter in the buyer's agreement. The promoter has

moved the application for issuance of occupation certificate only on 01.07.2019 when the period of 36 months has already expired. As per the settled law one cannot be allowed to take advantage of his own wrong. Accordingly, the benefit of grace period of 3 months cannot be allowed to the promoter at this stage. Therefore, the due date of possession comes out to be 31.07.2015.

29. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prescribed rate of interest. 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.*

30. 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.

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., 03.05.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR +2% i.e., 10.70%.

32. **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;"*

33. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.70 % by the respondent/promoter which is the same as is being granted to the complainants in case of delay possession charges.

34. 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 20.01.2011, the possession of the subject flat was to be delivered within a period of 36 months from the date of commencement of construction plus 3 months grace period for applying and obtaining the occupation certificate in respect of the unit and/or the project. The construction was started on 31.07.2012. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 31.07.2015. Occupation certificate was granted by the concerned authority on 25.01.2018 and thereafter, the possession of the subject unit was offered to the complainants on 09.03.2018. Thereafter the complainants have taken possession of the subject unit on 05.04.2019 and subsequently, the conveyance deed was executed on 16.05.2019. 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 to the complainants as per the terms and conditions of the buyer's agreement dated 20.01.2011 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the

buyer's agreement dated 20.01.2011 to hand over the possession within the stipulated period.

35. 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 was granted by the competent authority on 25.01.2018. The respondent offered the possession of the unit in question to the complainants only on 09.03.2018, so it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. These 2 months' of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they have 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. 31.07.2015 till the expiry of 2 months from the date of offer of possession (09.03.2018) which comes out to be 09.05.2018.

36. 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. 10.70 % p.a. w.e.f. 31.07.2015 till 09.05.2018 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

37. Also, the amount of compensation already paid by the respondent to the complainants towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.

#### **H. Directions of the authority**

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

- i. The respondent is directed to pay the interest at the prescribed rate i.e. 10.70 % per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 31.07.2015 till 09.05.2018 i.e. expiry of 2 months from the date of offer of possession (09.03.2018). 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. Also, the amount compensation already paid by the respondent towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.
- iii. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.
39. Complaint stands disposed of.
40. File be consigned to registry.

  
**(Sanjeev Kumar Arora)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

  
**(Ashok Sangwan)**

Member

Dated: 03.05.2023