

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

Complaint no. : 4393 of 2021  
Complaint filed on : 02.11.2021  
First date of hearing : 01.02.2022  
Order reserved on : 08.12.2022  
Order pronounced on : 14.02.2023

1. Shri Anuj Kumar Taneja  
2. Smt. Cheena Hazrati  
Both RR/o: 30/19, Ground Floor, East Patel Nagar,  
New Delhi 110008 Delhi.

**Complainants**

Versus

M/s Emaar India Ltd.  
(Formerly known as Emaar MGF Land Ltd.)  
Address: Emaar MGF Business Park,  
Mehrauli Gurgaon Road, Sikandarpur Chowk,  
Sector-28, Gurugram-122002, Haryana.

**Respondent**

**Coram:**

Shri Ashok Sangwan  
Shri Sanjeev Kumar Arora

**Member**  
**Member**

**Appearance:**

Shri Varun Chug  
Shri Harshit Batra

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.

2. Since the buyer's agreement has been executed on 13.04.2010 i.e. prior to the commencement of the Act ibid, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of statutory obligation on part of the promoter/respondent in terms of section 34(f) of the Act ibid.

**A. Project and unit related details**

3. 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	"Emerald Estate Apartments at Emerald Estate" in Sector 65, Gurugram, Haryana.
2.	Project area	25.499 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	06 of 2008 dated 17.01.2008 Valid/renewed up to 16.01.2025
5.	Name of licensee	Active Promoters Pvt. Ltd. and others, C/o Emaar MGF Land Ltd.
6.	HRERA registered/ not registered	"Emerald Estate" registered vide no. 104 of 2017 dated 24.08.2017 for 82768 sq. mtrs.

	HRERA registration valid up to	23.08.2022
7.	Occupation certificate granted on	11.11.2020 [annexure R11, page 168 of reply]
8.	Provisional allotment letter dated	18.09.2009 [annexure R2, page 41 of reply]
9.	Unit no.	EEA-E-F02-03, 2 <sup>nd</sup> floor, block E [annexure A, page 22 of complaint]
10.	Unit measuring	1310 sq. ft. [annexure A, page 22 of complaint]
11.	Date of execution of buyer's agreement	13.04.2010 [annexure A, page 20 of complaint]
12.	Complainants are subsequent allottee	The names of the complainants were endorsed on the buyer's agreement on 15.07.2010 in pursuance of agreement to sell dated 05.06.2010 executed between the complainants and the original allottees (Ms. Ruchee Sharma).
13.	Payment plan	Construction linked payment plan [annexure A, page 55 of complaint]
14.	Date of commencement of construction as per statement of account dated 30.11.2021 at page 213 of reply	26.08.2010
15.	Due date of delivery of possession as per clause 11(a) of the said agreement i.e. 36 months from the date of commencement of construction (26.08.2010) + grace period of 6 months, for applying and obtaining the completion certificate/ occupation certificate in respect of the unit and/or the project.	26.08.2013  <b>[Note: Grace period is not included]</b>

	[Page 35 of complaint]	
16.	Total consideration as per statement of account dated 30.11.2021 at page 213 of reply	Rs.59,05,413/-
17.	Total amount paid by the complainants as per statement of account dated 30.11.2021 at page 214 of reply	Rs.59,12,010/-
18.	<b>Date of offer of possession to the complainants</b>	<b>21.11.2020</b> [annexure C, page 57 of complaint]
19.	Delay in handing over possession w.e.f. 26.08.2013 till 21.01.2021 i.e. date of offer of possession (21.11.2020) + 2 months	7 year 4 months 26 days
20.	Unit handover letter dated	28.03.2021 [Annexure R12, page 183 of reply]
21.	Conveyance deed executed on	27.07.2021 [Annexure R13, page 187 of reply]
22.	Delay compensation already paid by the respondent as per statement of account dated 30.11.2021 at page 214 of reply	Rs.5,11,239/-

#### B. Facts of the complaint

4. The complainants have made the following submissions in the complaint:
  - i. That initially, the property in question i.e. apartment bearing no. EEA-E-F02-03 (tenth floor) in the project of the respondent known as "Emerald Estate Apartment" situated at Sector-65, Gurugram, Haryana, was booked by Ms. Ruchee Sharma in the year 2009. Thereafter, on 13.04.2010, Ms. Ruchee Sharma entered into a buyer's agreement with the respondent, by virtue of which the

- respondent allotted the subject apartment along-with car parking space in the said project.
- ii. That subsequent thereto, the complainants herein entered into an agreement with Ms. Ruchee Sharma to purchase the said property and the property was later assigned to the complainants by the respondent by virtue of assignment letter.
- iii. That as per the clause 11(a) of the said buyer's agreement dated 13.04.2010, the respondent had categorically stated that the possession of the said apartment would be handed over to the complainants within 36 months from the date of commencement of construction and development of the unit i.e., 26.08.2010, with a further grace period of another 6 months. Moreover, at the time of transferring the apartment in question, the complainants were further coerced by the respondent to sign affidavits/indemnity cum undertaking, in favour of the respondent wherein the complainants were required to undertake, not to claim or raise any compensation for delay in handing over possession of the property.
- iv. That the said buyer's agreement and the indemnity cum undertaking are totally one sided, which impose completely biased terms and conditions upon the complainants, thereby tilting the balance of power in favour of the respondent, which is further manifest from the fact that the delay in handing over the possession by the respondent would attract only a meagre penalty of Rs.5/- per sq. ft.,

on the super area of the flat, on monthly basis, whereas the penalty for failure to take possession would attract holding charges of Rs.50/- per sq. ft. and 24% penal interest on the unpaid amount of instalment due to the respondent.

- v. That, the property was sold by representing that the same will be luxurious apartments however all such representations seem to have been made in order to lure complainants to purchase the apartment at extremely high prices. There are various deviations from the initial representations.
- vi. That the respondent has breached the fundamental term of the contract by inordinately delaying in delivery of the possession by 81 months. The possession of the property in question was finally offered on 20.11.2020. The respondent has committed various acts of omission and commission by making incorrect and false statement in the advertisement material as well as by committing other serious acts.
- vii. That the complainants, without any default, had been timely paying the instalments towards the property, as and when demanded by the respondent towards the aforesaid residential apartment in the project and after making the balance payment which was to be made at the time of offer of possession, got the property transferred/ conveyed in their name on 27.07.2021.



- viii. That the respondent had promised to complete the project by February 2014, including the grace period of six months. The buyer's agreement was executed on 13.04.2010 and the possession was offered not prior to 20.11.2020 resulting into considerable delay of 81 months in handing over the possession of the property. The respondent has breached the fundamental term of the contract by inordinately delaying in delivery of the possession and not providing adequate compensation in line with the provisions of the Act.
- ix. That the respondent has committed various acts of omission and commission by making incorrect and false statement in the advertisement material as well as by committing other serious acts as mentioned in preceding paragraph. The project has been inordinately delayed. The respondent has resorted to misrepresentation. The complainants, therefore, seek direction to the respondent to pay interest @ 18% p.a. as payment, towards delay in handing over the property in question.

**C. Relief sought by the complainants**

5. The complainants have filed the present compliant for seeking following reliefs:
- i. Direct the respondent to pay interest @18% p.a. as payment towards delay in handing over the property in question as per the provisions of the Act and the rules.



- ii. Direct the respondent to pay a sum of Rs.50,000/- to the complainants towards the cost of litigation.
- iii. Pass such order or further order as this hon'ble authority may deem fit and proper in the facts and circumstances of the present case.

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

**D. Reply by the respondent**

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

- i. That the complainants have purchased the unit, in question as a speculative investment. The complainants never intended to reside in the said unit and have admittedly booked the same with a view to earn a huge profit from resale of the same. Thus, the complainants are not bona fide "Allottees" under the Act and the rules but are "Investors".
- ii. That the real estate project under consideration in the present complaint is duly registered with the Act vide memo no. HRERA(Reg.) 482/2017 dated 31.07.2017, having the regd. no. 104 of 2017. The complainants being interested in the real estate development of the respondent, known under the name and style of "Emerald Estate" entered into an agreement to sell dated 05.06.2010





with Ruchee Sharma ("Original Allottee") who, upon her application dated 08.08.2009, was originally allotted unit no. EEA-E-F02-03 located on 2<sup>nd</sup> floor, in Tower E ("Unit") vide provisional allotment letter dated 18.09.2009 and consequently through the buyer's agreement dated 13.04.2010.

- iii. That subsequent to the agreement to sell, the nomination of the complainants was confirmed vide letter dated 15.07.2010 upon submission and execution of request letters dated 16.06.2010 for transfer of the unit to the complainants, affidavits and undertakings of the transferor and transferee. The relationship between the parties is contractual in nature and is governed by the buyer's agreement, the contents of which were willingly and voluntarily accepted between the parties. The rights and obligations of the parties flow directly from the agreement. At the outset, it must be noted that the complainants willingly consciously and voluntarily entered into all and every agreement after reading and understanding the contents thereof to their full satisfaction. The payment schedule of the complainants was also corrected and revised vide letter dated 07.08.2014.
- iv. That as per the clause 11(a) of the buyer's agreement, the delivery of possession of the unit was proposed to be within 36 months from the date of start of construction and a grace period of 6 months, i.e., 26.02.2014. That the delivery of possession of the unit was "*Subject*



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

- v. That various allottees of the project have delayed in making payments against their respective units. As is widely known and understood that the continuous flow of funds is pertinent to the real estate industry, without the same, there ought to be delays in the construction status. Upon delay being caused by the complainants, they were served with payment request reminder- 1 dated 02.04.2017. Since, the complainants have defaulted in timely remittance of payments as per schedule of payment, the date of delivery of possession is not liable to be determined in the manner sought to be done in the present case by the complainants. Clause 11(b) (iv) is reproduced herein: *"That the Allottee(s) agrees and accepts that in case of delay /default in payment as per Annexure 3, the date of handing over of the possession shall be extended accordingly solely on the Company's discretion till the payment of all outstanding amounts to the satisfaction of the Company"*.
- vi. That the delivery of possession was also subject to the force majeure circumstances as under clause 27 of the agreement. The respondent was adversely affected by various construction bans, lack of availability of building material, regulation of the construction and



development activities by the judicial authorities including NGT in NCR on account of the environmental conditions, restrictions on usage of ground water by the High Court of Punjab & Haryana, etc. and other force majeure circumstances, yet, the respondent completed the construction of the project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the complainants and demanding the prices only as and when the construction was being done, as is evident from the statement of accounts annexed herewith.

- vii. That the project got delayed on account of various reasons which were/are beyond the power and control of the respondent and hence, the respondent cannot be held responsible for the same. *Firstly*, there were defaults on the part of the contractor (M/s B L Kashyap and Sons). The contractor was not able to meet the agreed timelines for construction of the project. The progress of the work at the project site was extremely slow on account of various defaults on the part of the contractor, such as failure to deploy adequate manpower, shortage of material etc. and hence, the respondent cannot be held responsible for the same. *Secondly*, the National Building Code (NBC) was revised in the year 2016 and in terms of the same, all high-rise buildings (i.e., buildings having height of 15 mtrs. and above), irrespective of the area of each floor, are now required to have two staircases. Furthermore, it was notified vide



Gazette published on 15.03.2017 that the provisions of NBC 2016 supersede those of NBC 2005. The respondent had accordingly sent representations to various authorities identifying the problems in constructing a second staircase. Eventually, so as to not cause any further delay in the project and so as to avoid jeopardising the safety of the occupants of the buildings in question, the respondent had taken a decision to go ahead and construct the second staircase. However, due to the impending BL Kashyap (contractor) issue of non-performance, the construction of the second staircase could not be started as well. Also, the arbitration proceedings titled as B L Kashyap and Sons Vs Emaar MGF Land Ltd. are pending before Justice A P Shah (retd.), Sole arbitrator and vide order dated 27.04.2019, the hon'ble arbitrator gave liberty to the respondent to appoint another contractor w.e.f. 15.05.2019. It is evident from the aforesaid that the respondent had been diligently pursuing the matter before the sole arbitrator and no fault can be attributed to the respondent in this regard. A force majeure situation that had arisen on account of which the respondent was unable to fulfill its obligations till the situation persisted.

- viii. That the respondent had the right to suspend the construction of the project upon happening of circumstances beyond the control of the complainants as per clause 11(b)(i), however, despite all the hardships faced by the respondent, the respondent did not suspend



- the construction and managed to keep the project afloat through all the adversities.
- ix. That the complainants being subsequent allottees, the extent of their reliefs, if any, shall depend on the facts and circumstances of each case. The Hon'ble Supreme Court has held in **Laureate Buildwell Pvt. Ltd vs. Charanjeet Singh 2021 SCC OnLine SC 479** that: 31...The nature and extent of relief, to which a subsequent purchaser can be entitled to, would be fact dependent... Further, the purchaser agrees to buy the flat with a reasonable expectation that delivery of possession would be in accordance within the bounds of the delayed timeline that he has knowledge of, at the time of purchase of the flat.
- x. That despite the innumerable hardships being faced by the respondent, the respondent completed the construction of the project by applying for the application for occupancy certificate dated 20.03.2020 before the concerned authority. The license no. 06 of 2008 of the project was renewed and extended on 13.05.2020 with validity till 16.01.2025. Thereafter, the occupancy certificate dated 11.11.2020 was also attained.
- xi. That thereafter, and only after obtaining the requisite permissions, the respondent legally offered the possession of the unit to the complainants on 20.11.2020. The complainants thereafter executed the indemnity cum undertaking for possession on 14.01.2021 and subsequently, the physical possession of the unit was taken on



28.03.2021 vide the unit handover letter. The complainants had satisfied themselves with regard to the measurement, location, dimension and development etc. of the unit and the complainants had no claim of any nature whatsoever against the company with regard to the size, dimension, area, location and legal status of the unit, and had taken the peaceful possession of the unit, as is evident in the unit handover letter.

- xii. That thereafter, the absolute title over the unit was transferred to the complainants through conveyance deed dated 27.07.2021 bearing vasika no.3321. That the complainants after having executed the conveyance deed, taking peaceful possession of the unit, and having enjoyed(ing) such possession, the complainants should not be entitled to claim the interest on the delayed possession. Thus, the present complaint is devoid of any cause of action and is nothing but an abuse of process of law. That a contract is deemed to be concluded after execution of the conveyance deed as the complainants are left with no right, entitlement or claim against the respondent and the transaction between the complainant and the respondent stands concluded and no right or liability can be asserted by the respondent or the complainant against the other. It is pertinent to take into reckoning that the complainants have obtained possession of the unit in question and the complaint is a



gross misuse of process of law and hence the present complaint is liable to be dismissed with heavy costs.

- xiii. That the respondent has had utmost bona fide since the very beginning. The respondent has already given compensation along with offer of possession of Rs.5,11,239/- on 20.11.2020. The respondent has also issued various credit memos on account of anti-profiting amounting to Rs.81,665/- along with an early payment rebate credit of Rs. 1,396/- as evident from the statement of account annexed herewith. Without prejudice to the rights of the respondent, delayed interest if any has to be calculated only on the amounts deposited by the allottee/complainant 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 the complainants seek interest for alleged delayed delivery of possession. It needs to be categorically noted that even though the due date for delivery of possession was proposed and not absolute and subject to the conditions as enumerated in clauses 11 and 27 of the buyer's agreement and the fact that the delay, if any, was caused due to the circumstances beyond the control of the respondent, the respondent has already given compensation along with offer of possession of Rs.5,11,239/- on 20.11.2020, as is evident from the



statement of accounts dated 30.11.2021. That after having already received the compensation as per the terms and conditions of the agreement, claiming interest cannot be rightfully demanded and hence the present claim is liable to be dismissed.

**E. Jurisdiction of the authority**

8. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I Territorial jurisdiction**

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

**E.II Subject-matter jurisdiction**

10. 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.*

11. 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.1 Objection regarding entitlement of DPC on ground of complainants being investors**

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 allottees/buyers and they have paid total price of Rs.59,12,010/- 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 allottees as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as ***M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.*** has also held that the concept of investor is not defined or referred in the Act.

Thus, the contention of promoter that the complainants-allottees being investors are not entitled to protection of this Act stands rejected.

**F.II Whether the subsequent allottee is entitled to claim delay possession charge under the Act.**

15. The respondent has contended that the entitlement of delay possession charges to complainants being subsequent allottee is depended on facts and circumstances of each case in view of the judgment passed by the Hon'ble Apex Court in case titled as **Laureate Buildwell Pvt. Ltd vs. Charanjeet Singh 2021 SCC OnLine SC 479.**
16. The authority has decided the entitlement of delay possession charges under proviso to section 18(1) of the Act to a subsequent allottee in the complaint titled as **Varun Gupta. Versus Emaar MGF Land Ltd. (CR/4031/2019).** The complainants in the present complaint are subsequent allottee and have purchased the unit in question from the previous allottees vide agreement to sell dated 05.06.2010 and thereafter, their name was endorsed on the buyer's agreement. In the instant case, the complainants have stepped into the shoes of original allottee before the lapse of the due date of possession i.e., 26.08.2013. In terms of the order passed by the authority in complaint titled as **Varun Gupta. Versus Emaar MGF Land Ltd. (CR/4031/2019),** the complainants-allottees are entitled to delayed possession charges w.e.f. due date of handing over possession as per the terms of the buyer's agreement.

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

17. The respondent contended that the absolute title over the unit was transferred to the complainants through conveyance deed dated 27.07.2021 bearing vasika no.3321. It was further contended that the complainants after having executed the conveyance deed, taking peaceful possession of the unit, and having enjoyed(ing) such possession, the complainants should not be entitled to claim the interest on the delayed possession. Thus, the present complaint is devoid of any cause of action and is nothing but an abuse of process of law.
18. The authority has already decided the said issue in the complaint titled as **Varun Gupta. Versus Emaar MGF Land Ltd. (CR/4031/2019)** wherein it was 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. 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.**
19. The authority is of the view that allottees have invested their hard-earned money which there is no doubt that the promoter has been

enjoying benefits of and the next step is to get their title perfected by executing a conveyance deed which is the statutory right of the allottee. Also, the obligation of the developer – promoter does not end with the execution of a conveyance deed. The essence and purpose of the Act was to curb the menace created by the developer/promoter and safeguard the interests of the allottees by protecting them from being exploited by the dominant position of the developer which he thrusts on the innocent allottees. Therefore, in furtherance to the Hon'ble Apex Court judgement and the law laid down in the **Wg. Cdr. Arifur Rahman (supra)**, the 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 on the reliefs sought by the complainants**

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

20. **Relief sought by the complainants:** Direct the respondent to pay interest @18% p.a. as payment towards delay in handing over the property in question as per the provisions of the Act and the rules.
21. 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."*

22. Clause 11(a) of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

**"11. POSSESSION**

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

*Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 36 months from the date of commencement of construction and development of the Unit. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of six months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project."*

23. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainants not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment time period for handing

over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject floor and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

24. **Due date of possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 36 months from the date of commencement of construction and it is further provided in agreement that promoter shall be entitled to a grace period of six months for applying and obtaining completion certificate/occupation certificate in respect of said floor. The construction commenced on 26.08.2010 as per statement of account dated 30.11.2021. The period of 36 months expired on 26.08.2013. As a matter of fact, the promoter has not applied to the concerned authority for obtaining completion certificate/occupation certificate within the time limit prescribed by the promoter in the buyer's agreement. As per the settled law one cannot be allowed to take advantage of his own wrong. Accordingly, this grace period of six months cannot be allowed to the promoter at this stage. Therefore, the due date of possession comes out to be 26.08.2013.

25. **The amount on which delay possession charges are payable:** On 08.12.2022, the counsel for the respondent argued that DPC may not be allowed on the statutory charges paid to the government. The same was objected by the counsel for the complainants.

26. The authority elucidating the definition of term 'interest' as defined under section 2(za)(ii) of the Act which provides that the rate of interest payable by promoter to the allottee, in case of default, 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. 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) ...;*

*(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;"*

27. The authority is of the view that while computing the amount on which delay possession charges are payable, the Act does not preclude the statutory charges paid by the allottee to the promoter. Accordingly, the delay possession charges shall be payable on the amount or part thereof paid by the allottee to the promoter.

28. Moreover, the Hon'ble Punjab and Haryana High Court in **RERA Appeal no. 95 of 2021 (O&M) titled as Emaar India Limited (formerly known**



*as Emaar MGF Land Ltd.) Vs. Kaushal Pal Singh alias Kushpal Singh*

has held as under:

*On a careful reading of the proviso to Section 18(1) of the 2016 Act, it is evident that an allottee who does not intend to withdraw from the project, is entitled to be paid by the promoter the interest for every month of delay till the delivery of possession at such rate as may be prescribed. It is in the nature of damages or compensation for delay in delivery of the possession of the apartment/unit. Such interest for every month of delay is payable on the entire amount paid by the allottee. The interest has been defined in Section 2(za) of the 2016 Act. Explanation(i) of Section 2(Aa) of the 2016 Act provides that in case of default, the interest is payable by the promoter to the allottee at the rate equal to the rate of interest as shall be prescribed in this behalf. Explanation (ii) Section 2(Za) of the 2016 Act provides that the interest shall be payable to the allottee from the date the promoter received the amount or any part thereof. The proviso to Section 18(1) of the 2016 Act clearly enables the authority to compensate the allottee for the losses suffered on account of delay in delivery of possession by the promoter. **The interest shall be payable on the complete amount paid by the allottee to the promoter. The learned counsel representing the appellant has failed to draw the attention of the Court towards any statutory provision prohibiting the payment of interest on the amount of H-VAT, GST, EDC etc. under proviso to Clause (1) of Section 18 of the 2016 Act to the allottee.** Section 2(g) of the 1975 Act defines the external development works. Section 3(3)(a)(ii) of the 1975 Act provides that the owner who wants to develop his land into a colony is liable to pay the proportionate development charges. In other words, the liability to pay the amount is on the licensee (owner-promoter). (Emphasis supplied)*

29. In furtherance of the citation mentioned above and law laid down by the Hon'ble Punjab and Haryana High Court, *interest for every month of delay is payable on the entire amount paid by the allottee.*
30. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the rate of 18% p.a. However, proviso to section 18 provides that where an

allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been 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.*

31. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
32. Taking the case from another angle, the complainants-allottees were entitled to the delayed possession charges/interest only at the rate of Rs.5/- per sq. ft. per month as per clause 13(a) of the buyer's agreement for the period of such delay; whereas, the promoter was entitled to interest @ 24% per annum at the time of every succeeding instalment from the due date of instalment till the date of payment as per clause 1.2(c) of the buyer's agreement. The functions of the authority are to safeguard the interest of the aggrieved person, may be the allottee or the

promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of his dominate position and to exploit the needs of the home buyers. This authority is duty bound to take into consideration the legislative intent i.e., to protect the interest of the consumers/allottees in the real estate sector. The clauses of the buyer's agreement entered into between the parties are one-sided, unfair and unreasonable with respect to the grant of interest for delayed possession. There are various other clauses in the buyer's agreement which give sweeping powers to the promoter to cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the buyer's agreement are ex-facie one-sided, unfair and unreasonable, and the same shall constitute the unfair trade practice on the part of the promoter. These types of discriminatory terms and conditions of the buyer's agreement will not be final and binding.

33. 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., 14.02.2023 is 8.60%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.60%.
34. **Rate of interest to be paid by complainants/allottees for 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—*

*(iii) 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;*

*(iv) 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;”*

35. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.60% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.
36. 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 11(a) of the buyer's agreement executed between the parties on 13.04.2010, the possession of the said unit was to be delivered within a period of 36 months from the date of commencement of construction and it is further provided in agreement that promoter shall be entitled to a grace period of six months for applying and obtaining completion certificate/occupation certificate



in respect of said floor. 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 26.08.2013. The complainants in the present complaint are subsequent allottees and had purchased the unit in question from the original allottee and thereafter, the respondent had acknowledged the same vide endorsement on the buyer's agreement. In terms of the order passed by the authority in complaint titled as **Varun Gupta Versus Emaar MGF Land Ltd. (CR/4031/2019)**, the complainants are entitled to delayed possession charges w.e.f. the due date of handing over the possession as per the terms of the buyer's agreement. In the present case, the complainants were offered possession by the respondent on 21.11.2020 after obtaining occupation certificate dated 11.11.2020 from the competent authority. Thereafter, the complainants have taken the possession of the subject unit vide unit handover letter dated 28.03.2021 and have subsequently executed the conveyance deed on 27.07.2021. The authority is of the considered view that there is delay on part of the respondent to offer physical possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 13.04.2010 executed between the parties.

37. 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 11.11.2020. However, the



respondent offered the possession of the unit in question to the complainants only on 21.11.2020, 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, they 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. 26.08.2013 till the expiry of 2 months from the date of offer of possession (21.11.2020) which comes out to be 21.01.2021. Also, the complainants are directed to take possession of the unit in question within 2 months from the date of this order as per section 19(10) of the Act after clearing outstanding dues, if any.

38. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainants are entitled to delay possession charges at prescribed rate of the interest @ 10.60 % p.a. w.e.f. 26.08.2013 till 21.01.2021 as per provisions of section 18(1) of the Act read with rule 15 of the rules.



39. Also, the amount of Rs.5,11,239/- (as per statement of account dated 30.11.2021) so paid by the respondent to the complainants towards compensation for delay in handing over possession in terms of the buyer's agreement 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**

40. 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) of the Act:

- i. The respondent is directed to pay the interest at the prescribed rate i.e. 10.60 % per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 26.08.2013 till 21.01.2021 i.e. expiry of 2 months from the date of offer of possession (21.11.2020). 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 of Rs.5,11,239/- so 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.



iii. Also, the complainants are directed to take possession of the unit in question within 2 months from the date of this order as per section 19(10) of the Act after clearing outstanding dues, if any.

41. Complaint stands disposed of.

42. File be consigned to registry.

  
**(Sanjeev Kumar Arora)**  
Member  
Haryana Real Estate Regulatory Authority, Gurugram

  
**(Ashok Sangwan)**  
Member

Dated: 14.02.2023

