



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

Date of decision: 21.02.2023

NAME OF THE BUILDER

**M/S EMAAR INDIA LTD.
(EARLIER KNOWN AS M/S EMAAR MGF LAND LIMITED)**

PROJECT NAME

"COLONNADE"

S.No.

Case No.

Case title

1

CR/5197/2022

Manoj Gupta Vs. Emaar India Ltd.

2

CR/5198/2022

Manoj Gupta Vs. Emaar India Ltd.

CORAM:

Shri Vijay Kumar Goyal

Member

Shri Ashok Sangwan

Member

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Shri Sanjeev Sharma

Counsel for the complainant

Shri J.K. Dang

Counsel for the respondent

ORDER

1. This order shall dispose both complaints titled as above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules"). Since the core issues emanating from these complaints are similar in nature and the complainant in the above referred matters are allottee of the projects,



namely, Colonnade, Sector 66, Gurugram being developed by the same respondent promoter i.e., Emaar India Limited. The terms and conditions of the buyer's agreements that had been executed between the parties *inter se* are also almost similar with some additions or variation. The fulcrum of the issue involved in both these complaints pertain to failure on the part of the respondent/promoter to deliver timely possession of the units in question, seeking award for delayed possession charges.

2. Both the aforesaid complaints were filed under section 31 of the Act read with rule 28 of the rules by the complainant-allottee against the promoter M/s Emaar India Limited on account of violation of the buyer's agreement executed between the parties *inter se* in respect of subject units for not handing over possession by the due date which is an obligation on the part of the promoter under section 11(4)(a) of the Act *ibid* apart from contractual obligation.
3. Since, the buyer's agreements have been executed prior to the commencement of the Act *ibid*, therefore, the penal proceedings cannot be initiated retrospectively on account of failure of the promoter to give possession by the due date and violation of provisions of section 11(4)(a) of the Act. Delay possession charges to be paid by the promoter is positive obligation under proviso to section 18 of the Act in case of failure of the promoter to hand over possession by the due date as per buyer's agreement.
4. The details of the complaints, reply status, unit no., date of buyer's agreement, possession clause, due date of possession, total sale



consideration, total paid amount, and relief sought are given in the table below:

Project: Colonnade, Sector 66, Gurugram, Haryana

Possession clause: 16. (a) Time of handing over the possession

(i) The company shall endeavor to offer possession of the unit to the allottee within 42 months from Aug,2016 from the date of start of construction whichever is earlier, subject, however, to force majeure conditions as stated in clause 34 of this agreement and further subject to the allottee having strictly complied with all the terms and conditions of this agreement and not being in default under any provisions of this agreement and all amounts due and payable by the allottee under this agreement having been paid in time to the company. The company shall give notice to the allottee, offering in writing, to the allottee to take possession of the unit for his occupation and use ("notice/intimation of possession").

(ii) The allottee agrees and understands that the company shall be entitled to the grace period of 4 months over and above the period more particularly specified here-in-above in clause 16(i)(a), for applying and obtaining necessary approvals in respect of the complex.

Note: Grace period of 4 months is not included.

Occupation certificate was granted by the concerned authority on 31.03.2022.

Table for both the complaints

Sr. no.	Complaint No., Case Title, and Date of filing of complaint and reply	Unit no. and size of unit	Date of allotment letter	Date of execution of buyer agreement	Date of start of excavation	Due date of possession	Total sale consideration and amount paid by the allottee	Date of offer of possession
1.	CR/5197/2022 Manoj Gupta V/s Emaar India Limited DOF- 26.07.2022 Reply filed on 19.10.2022	CHC R-01-006* (CHC R-UGF-006) Area increase d to 428.73 sq. ft. from 389 sq. ft. [page 20 of comp.]	30.03.2015 [Page 26 of reply]	22.05.2016 [Page 16 of complaint]	29.05.2017 [Page 68 of complaint]	01.02.2020	TC- Rs. 37,37,901 AP- Rs. 21,45,623 CP- Rs. 1,09,101	14.04.2022 [Page 106 of reply]

2.	CR/5198/2022 Manoj Gupta V/s Emaar India Limited DOF- 26.07.2022 Reply filed on 19.10.2022	CHC R- GF-023* (CHC R- LGF- 044) Area increased to 647.02 sq. ft. from 643 sq. ft. [page 21 of comp.]	30.03.2015 [Page 27 of reply]	22.05.2016 [Page 17 of complaint]	29.05.2017 [Page 69 of complaint]	01.02.2020	TC- Rs. 59,61,896 AP- Rs. 34,38,662 CP- Rs. 1,31,976	13.04.2022 [Page 110 of reply]
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Note : "*" marked represents revised unit number as per letter of offer of possession.

Relief sought in both the complaints:

1. Direct the respondent to pay interest for delay possession.
2. Promoter be ordered to pay for harassment caused to the complainant as damages along with cost of litigation to the tune of Rs. 1,50,000/-.

Abbreviations used in aforesaid table:

Abbreviation	Full form
DOF	Date of filing of complaint
TC	Total consideration
AP	Amount paid by the allottee/s
CP	Compensation amount already paid by the respondent in terms of the buyer's agreement

5. The facts of both the complaints filed by the complainant/allottee are also similar. So, out of the above-mentioned cases, the facts of the lead case of **CR/5197/2022** titled as **Manoj Gupta Vs M/s Emaar India Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua delay possession charges relief sought by the complainant in the abovementioned complaints.

A. Project and unit related details

6. The particulars of the project, the amount of sale consideration, the amount paid by the complainant(s), date of proposed handing over the



possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	Colonnade, Sector 66, Gurugram, Haryana
2.	Total area of the project	2.25 acres
3.	Nature of the project	Commercial Complex
4.	DTCP license no.	163 of 2008 dated 19.08.2008
	Validity of license	18.08.2020
	Licensee	Logical Developers Pvt. Ltd.
	Area for which license was granted	2.25 acres
5.	HRERA registered/ not registered	Registered vide no. 156 of 2017 dated 28.08.2017
	HRERA registration valid up to	30.06.2020
6.	Occupation certificate granted on	31.03.2022 [pg. 107 of reply]
7.	Provisional allotment letter issued on	30.03.2015 [page 26 of reply]
8.	Unit no. as per buyer's agreement	CHC R-UGF-006, upper ground floor measuring 389 sq. ft. [page 20 of complaint]
9.	Unit renumbered/revised vide letter of offer of possession dated 14.04.2022	CHC R-01-006 [Page 106 of reply]



10.	Change in area of the unit vide letter of offer of possession dated 14.04.2022	Increased to 428.73 sq. ft. from earlier area of 389 sq. ft.
11.	Date of execution of buyer's agreement	22.05.2016 [page 16 of complaint]
12.	Possession clause	<p>16. POSSESSION</p> <p>(a) Time of handing over the possession</p> <p>(i) The company shall endeavor to offer possession of the unit to the allottee within 42 months from Aug,2016 from the date of start of construction whichever is earlier, subject, however, to force majeure conditions as stated in clause 34 of this agreement and further subject to the allottee having strictly complied with all the terms and conditions of this agreement and not being in default under any provisions of this agreement and all amounts due and payable by the allottee under this agreement having been paid in time to the company. The company shall give notice to the allottee, offering in writing, to the allottee to take possession of the unit for his occupation and use ("notice/intimation of possession").</p> <p>(ii) The allottee agrees and understands that the company shall be entitled to the grace period of 4 months over and above the period more particularly specified here-in-above in clause 16(i)(a), for applying and obtaining necessary approvals in respect of the complex.</p>



		(Emphasis supplied) [pg. 32 of complaint]
13.	Date of start of excavation as per SOA dated 20.04.2022	29.05.2017 [pg. 68 of complaint]
14.	Due date of possession	01.08.2020 (due date of possession as per agreement i.e., 01.02.2020 + 6 months covid relaxation) [Note: Grace period of 4 months is not included] [Note: Benefit of 6 months covid relaxation is allowed to both the parties as no interest shall be charged on the outstanding amount from the complainant allottee for six months period for which DPC charges are allowed]
15.	Total consideration as per payment plan annexed with the buyer's agreement at pg. 29 of reply	Rs. 37,37,901/-
16.	Total amount paid by the allottees as per statement of account dated 20.04.2022, at page 69 of complaint	Rs. 21,45,623/-
17.	Offer of possession	14.04.2022 [pg. 106 of reply]
18.	Delay compensation already paid by the respondent in terms of the buyer's agreement as per SOA at page 69 of complaint	Rs. 1,09,101



B. Facts of the complaint

7. The complainant has made the following submissions in the complaint:
- i. That complainant Mr. Manoj Gupta booked/purchased a commercial property /shop no. CHC-R-UGF-006 admeasuring 428.73 sq. ft. in May-2016 and paid initial amount as desired by the developer. The buyer's agreement was executed between complainant and respondent undated whose stamp etc. was purchased on 22.05.2016. The respondent may have same date on his copy of the agreement, but complainant's copy of buyer's agreement is blank and undated till date.
 - ii. That as per clause 16(A) of the buyer agreement, "The Company shall Endeavour to offer possession of the unit to the allottee within 42 months from August 2016 from the date of start of construction whichever is earlier" which means latest up to February 2020.
 - iii. That the complainant has paid Rs. 19,80,790/- till May, 2019 and paid Rs. 21,45,623/- till date out of Rs. 43,39,347/- to be paid at the time of possession as per statement of account provided by the respondent himself dated 20th April 2022 whereas as per Annexure III on page 30 of buyer's agreement the consideration amount was 37,37,901/-.
 - iv. That respondent unilaterally changed the shop booked /purchased from CHC-R-UGF-006 to CHC-R-01-006 without any fault of the complainant on pretext of change in the building plans which is illegal undue and needs to be restored. This is absolute contravention of the Act under section 12 of the Act. The



respondent without adjusting the delay possession charge (interest) against the demand in demanding excess amount which is illegal and requires authority's intervention and direction in this regard. The complainant has through this complaint invoked the jurisdiction of this authority under section 18 of the Act read with section 31 of the Act.

C. Relief sought by the complainant:

8. The complainant has sought following relief(s):
 - i. Direct the respondent to pay interest for delay possession.
 - ii. Promoter be ordered to pay for harassment caused to the complainant as damages along with cost of litigation to the tune of Rs. 1,50,000/-.
9. On the date of hearing, the authority explained to the respondent/promoters about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

10. The respondent has contested the complaint on the following ground:
 - i. That the complainant is not an "allottee" but an investor who has purchased the unit in question as a speculative investment. The complainant has also purchased another unit in the same project in respect of which complaint no. 5198 of 2022 has been filed by the complainant. Thus, the complaint is not maintainable in law.



- ii. That the complainant had approached the respondent and expressed his interest in booking a commercial unit in the commercial project being developed by the respondent known as "Colonnade" situated in Sector 66, Gurugram. Prior to making the booking, the Complainant conducted extensive and independent enquiries with regard to the project and it was only after the Complainant was fully satisfied about all aspects of the project, that the Complainant took an independent and informed decision, uninfluenced in any manner by the Respondent, to book the unit in question.
- iii. That the complainant was provisionally allotted unit no. CHC R-01-006 (previously unit no UGF-006), admeasuring 389 sq. ft. approx. super area. Thereafter, the buyer's agreement was executed between the complainant and the respondent on 24.06.2016.
- iv. That the complainant had opted for a construction linked payment plan in terms of which after booking, the instalments were payable upon achievement of the construction milestone indicated in the payment plan. Although the complainant had agreed and undertaken to make timely payments in accordance with the payment schedule but the complainant defaulted in payment of instalments. The respondent issued payment request letters and reminders for payment as per the payment plan.
- v. That as per the terms and conditions of the buyer's agreement, the complainant was under a contractual obligation to make timely payment of all amounts payable under the buyer's agreement, on



- or before the due dates of payment failing which the respondent is entitled to levy delayed payment charges in accordance with clause 2.2(b) read with clauses 14 and 15 of the buyer's agreement.
- vi. That in the meanwhile, the respondent registered the project under the provisions of the Act vide RERA Registration Certificate dated 28.08.2017. The respondent has already applied for extension of registration. The respondent completed construction of the project and applied for the occupation certificate in respect thereon on 08.12.2021. The occupation certificate was issued by the competent authority on 31.03.2022. That once an application for grant of occupation certificate is submitted for approval in the office of the concerned statutory authority, the respondent ceases to have any control over the same. The grant of sanction of the occupation certificate is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence. As far as the respondent is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authority for obtaining of the occupation certificate. No fault or lapse can be attributed to the respondent in the facts and circumstances of the case. Therefore, the time period utilised by the statutory authority to grant occupation certificate to the respondent is necessarily required to be excluded from computation of the time period utilised for implementation and development of the project.
- vii. That upon receipt of the occupation certificate, the respondent offered possession of the unit in question to the complainant vide



letter dated 14.04.2022. The complainant was informed about the increase in super area of the unit from 389 sq. ft. to 428.73 sq. ft. and was also called upon to remit balance amount as per the attached statement and also to complete the necessary formalities and documentation so as to enable the respondent to hand over possession of the unit to the complainant. That compensation amounting to Rs. 1,09,101/- was also credited to the complainant although in accordance with clause 19(c) of the buyer's agreement, the complainant, being in default of the buyer's agreement is/was not entitled to any compensation from the respondent. Moreover, an amount of Rs. 66,642/- was credited to the complainant on account of Anti Profiteering. However, instead of making payment of the balance amount of Rs. 23,43,155/- (including delay payment charges) and taking possession of the unit, the complainant has preferred the present false and frivolous complaint.

- viii. That the respondent has duly fulfilled its contractual obligations under the buyer's agreement by offering possession of the unit to the complainant within the time period stipulated under the buyer's agreement. The contractual relationship between the complainant and the respondent is governed by the terms and conditions of the buyer's agreement dated 24.06.2016. Clause 14 of the buyer's agreement provides that time shall be the essence of the contract in respect of the allottee's obligation to perform/observe all obligations of the allottee including timely payment of the lease premium as well as other amounts payable by the allottee under



the agreement. Clause 15 of the buyer's agreement, *inter alia*, provides for levy of interest on delayed payments by the allottee.

- ix. That clause 16 of the buyer's agreement provides that subject to force majeure conditions and delay caused on account of reasons beyond the control of the respondent, and subject to the allottee not being in default of any of the terms and conditions of the same, the respondent expects to deliver possession of the unit within a period of 42 months plus four months grace period, from August 2016 or the date of start of construction, whichever is earlier. In the case of delay by the allottee in making payment or delay on account of reasons beyond the control of the respondent, the time for delivery of possession stands extended automatically. In the present case, the complainant is a defaulter who has failed to make timely payment of sale consideration as per the payment plan and is thus in breach of the buyer's agreement. The time period for delivery of possession automatically stands extended in the case of the complainant in accordance with clause 17(vi) of the buyer's agreement, till payment of all outstanding amounts to the satisfaction of the respondent.
- x. That 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, demonetization 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.

- xi. That in so far as payment of compensation/interest to the complainant is concerned, it is submitted that the complainant, being in default, is not entitled to any compensation in terms of clause 19(c) of the buyer's agreement. Furthermore, no compensation is payable due to delay or nonreceipt of the occupation certificate, completion certificate and/or any other permission/sanction from the competent authority. Nevertheless, the respondent has proceeded to credit compensation amounting to Rs. 1,09,101/- to the complainant against the last demand payable on offer of possession.
- xii. That several allottees, including the complainant has defaulted in timely remittance of payment of installments which was an essential, crucial and an indispensable requirement for conceptualisation and development of the project in question. Furthermore, when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially whereas enormous business losses befall upon the respondent. The respondent, despite default of several allottees, has diligently and earnestly pursued the



development of the project in question and has constructed the project in question as expeditiously as possible. Therefore, there is no default or lapse on the part of the respondent and there is no equity in favour of the complainant. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainant are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold

11. Copies of all relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submissions made by parties.

E. Jurisdiction of the authority

12. 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

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



E. II Subject matter jurisdiction

14. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

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

F. Findings on the relief sought by the complainant

F. I Delay possession charges

Relief sought by the complainant: Direct the respondent to pay interest for delay possession.

16. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Proviso to section 18(1) 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."

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

"16. POSSESSION

(a) Time of handing over the possession

- (i) *The company shall endeavor to offer possession of the unit to the allottee within 42 months from aug,2016 from the date of start of construction whichever is earlier, subject, however, to force majeure conditions as stated in clause 34 of this agreement and further subject to the allottee having strictly complied with all the terms and conditions of this agreement and not being in default under any provisions of this agreement and all amounts due and payable by the allottee under this agreement having been paid in time to the company. The company shall give notice to the allottee, offering in writing, to the allottee to take possession of the unit for his occupation and use ("notice/intimation of possession").*
- (ii) *The allottee agrees and understands that the company shall be entitled to the grace period of 4 months over and above the period more particularly specified here-in-above in clause 16(i)(a), for applying and obtaining necessary approvals in respect of the complex."*

18. **Due date of possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 42 months from Aug, 2016 from the date of start of construction whichever is earlier and further provided in agreement that promoter shall be entitled to a grace period of 4 months for applying and obtaining completion certificate/occupation certificate in respect of said unit. The date of start of construction is 29.05.2017 as per statement of account



dated 20.04.2022. The due date is calculated from August 2016 being earlier. The period of 42 months expired on 01.02.2020. As a matter of fact, the promoter has not applied to the concerned authority for obtaining necessary approvals within the time limit (42 months) prescribed by the promoter in the buyer's agreement. The promoter has moved the application for issuance of occupation certificate only on 14.12.2021 when the period of 42 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 4 months cannot be allowed to the promoter due to aforesaid reasons.

19. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is 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.



20. The legislature in its wisdom in the subordinate legislation under rule 15 of the rules has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
21. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 21.02.2023 is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
22. **Rate of interest to be paid by the complainant in case of delay in making payments-** The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*



23. Therefore, interest on the delay payments from the complainant 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 complainant in case of delayed possession charges.
24. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 16(a) of the buyer's agreement executed between the parties on 22.05.2016, the possession of the subject unit was to be delivered within a period of 42 months from aug,2016 from the date of start of construction whichever is earlier plus 4 months grace period for applying and obtaining the necessary approvals in respect of the complex. 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 01.02.2020. Occupation certificate was granted by the concerned authority on 31.03.2022 and thereafter, the possession of the subject unit was offered to the complainant on 14.04.2022. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's



agreement dated 22.05.2016 to hand over the possession within the stipulated period.

25. 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 31.03.2022. The respondent offered the possession of the unit in question to the complainant only on 14.04.2022, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. These 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. Also, benefit of 6 months covid relaxation is allowed to both the parties as no interest shall be charged on the outstanding amount from the complainant allottee for six months period for which DPC charges are allowed. It is further clarified that the delay possession charges shall be payable w.e.f. 01.08.2020 (the due date of possession i.e. 01.02.2020 + 6 months covid



relaxation) till the expiry of 2 months from the date of offer of possession (14.04.2022) which comes out to be 14.06.2022.

26. 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 complainant is entitled to delayed possession at prescribed rate of interest i.e. 10.70 % p.a. w.e.f. 01.08.2020 till 14.06.2022 as per provisions of section 18(1) of the Act read with rule 15 of the rules.
27. Also, the amount of Rs.1,09,101/- so paid by the respondent to the complainant 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.

F.II Promoter be ordered to pay for harassment caused to the complainant as damages along with cost of litigation to the tune of Rs. 1,50,000/-.

28. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (Decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating



officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

G. Directions of the authority

29. 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 complainant w.e.f. 01.08.2020 (the due date of possession i.e. 01.02.2020 + 6 months covid relaxation) till 14.06.2022 i.e. expiry of 2 months from the date of offer of possession (14.04.2022). The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules. Also benefit of 6 months covid relaxation is allowed to both the parties as no interest shall be charged on the outstanding amount from the complainant-allottee for six months period for which DPC charges are allowed.
- ii. Also, the amount of Rs. 1,09,101/- so paid by the respondent towards compensation for delay in handing over possession shall be adjusted



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towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.

30. This decision shall mutatis mutandis apply to cases mentioned in para 4 of this order.
31. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
32. Files be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.02.2023

HARERA
GURUGRAM