

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

Complaint no. : 1940 of 2022  
Complaint filed on : 10.05.2022  
First date of hearing : 17.08.2022  
Order reserved on : 24.11.2022  
Order pronounced on : 28.03.2023

Shri Vaibhav Mani Pandey  
R/o: B-304 Emerald Estate Apartment,  
Sector 65, Gurugram, Haryana.

**Complainant**

Versus

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

**Respondent**

**Coram:**

Shri Ashok Sangwan  
Shri Sanjeev Kumar Arora

**Member  
Member**

**Appearance:**

Shri Gaurav Rawat  
Shri Dhruv Rohtagi

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. The present complaint has been filed by the complainant/allottee 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 15.01.2010 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 complainant, 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.	06 of 2008 dated 17.01.2008
	License valid till	16.01.2025
	Licensee name	Active Promoters Pvt. Ltd. and 2 others C/o Emaar MGF Land Ltd.
	Area for which license was granted	25.499



5.	HRERA registered/ registered	not	<b>Registered vide no. 104 of 2017 dated 24.08.2017 for 82768 sq. mtrs.</b>
	HRERA registration valid up to		<b>23.08.2022</b>
6.	Applied for occupation certificate on		29.06.2017 [Annexure R11, page 194 of reply]
7.	Occupation certificate granted on		08.01.2018 [Annexure R11, page 195 of reply]
8.	Provisional allotment letter dated		18.08.2009 [annexure R2, page 40 of reply]
9.	Unit no.		EEA-B-F03-04, 3 <sup>rd</sup> floor, block B. [Annexure C2, page 48 of complaint]
10.	Unit measuring		1395 sq. ft. [Annexure C2, page 48 of complaint]
11.	Date of execution of buyer's agreement with original allottees (Mrs. Kala Shankar and V. Sankaranarayanan)		15.01.2010 [Annexure C2, page 46 of complaint]
12.	Agreement to sell between the original allottee and the 1 <sup>st</sup> subsequent allottees (M/s Rosamary Hospitality Pvt. Ltd.)		19.08.2010 [Annexure R5, page 101-122 of reply]
13.	Agreement to sell between 1 <sup>st</sup> subsequent allottee and 2 <sup>nd</sup> subsequent allottees (Rahul Sharma and Krishna Sharma)		30.03.2011 [Annexure R6, page 123-140 of reply]
14.	Agreement to sell between 2 <sup>nd</sup> subsequent allottees and the complainant (3 <sup>rd</sup> subsequent allottee)		29.01.2017 [Annexure R7, page 141-164 of reply]
15.	Complainant is 3 <sup>rd</sup> subsequent allottee		The nomination letter was issued in favour of the complainant on 06.04.2017 [Page 165 of reply] in pursuance of agreement to sell dated 29.01.2017 executed between the complainant and the 2 <sup>nd</sup> subsequent allottees (Rahul Sharma and Krishna Sharma).



16.	Possession clause	<b>11. Possession</b> <b>(a) Time of handing over the Possession</b> <i>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.</i> [Emphasis supplied] [Page 61 of complaint]	
17.	Date of commencement of construction as per statement of account dated 09.04.2022 at page 108 of complaint	26.08.2010	
18.	Due date of delivery of possession as per clause 11(a) of the said agreement	26.08.2013 <b>[Note: Grace period is not included]</b>	
19.	Total consideration	As per payment plan annexed with the agreement	As per statement of account dated 09.04.2022 at page 108 of complaint
		Rs.54,43,255/-	Rs.58,25,614/-
20.	Total amount paid by the complainant as per statement of account dated 09.04.2022 at page 110 of complaint	Rs.58,67,320/-	
21.	<b>Date of offer of possession to the complainant</b>	<b>17.04.2018</b> [Annexure R12, page 197 of reply]	
22.	Unit handover letter issued in favour of the complainant on	02.05.2018 [Annexure R13, page 203 of reply]	



23.	Conveyance deed executed between the complainant and the respondent on	07.08.2018 [Annexure R15, page 207 of reply]
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**B. Facts of the complaint**

4. The complainant has made the following submissions in the complaint:

- i. That the respondent advertised about its project namely 'Emerald Estate Apartment' (hereinafter called as 'the project'), in Sector 65 of the Gurugram. The respondent painted a rosy picture of the project in its advertisements making tall claims.
- ii. That in 2008, the respondent company issued an advertisement announcing a group housing colony project called "Emerald Estate Apartments" at Sector 65, Gurugram was launched by the respondent under the license no. 06 of 2008 dated 17.01.2008, issued by DTCP, Haryana, Chandigarh and thereby invited applications from prospective buyers for the purchase of unit in the said project. The respondent confirmed that the projects had got building plan approval from the authority.
- iii. That the complainant while searching for a flat/accommodation was lured by such advertisements and calls from the brokers of the respondent for buying a house in the said project. The respondent company told the complainant about the moonshine reputation of the company and the representative of the respondent company made huge presentations about the project mentioned above and also assured that they have delivered several such projects in the



National Capital Region. Relying on various representations and assurances given by the respondent company and on belief of such assurances, Mr. Kala Shankar, booked a unit in the project by paying an amount of Rs. 5,00,000/- on 16.08.2009 towards the booking of the said unit bearing no. EEA-B-F03-04 having super area measuring 1395 sq. ft. to the respondent and the same was acknowledged by the respondent.

- iv. That the respondent confirmed the booking of the unit to the original allottee vide allotment letter dated 18.08.2009, providing the details of the project, confirming the booking of the unit no. EEA-B-F03-04, in Sector 65, (hereinafter referred to as 'unit') measuring 1395 sq. ft. (super built-up area) in the aforesaid project of the developer for a total sale consideration of the unit i.e., Rs. 54,43,255/-, which includes basic price, plus EDC and IDC, car parking charges and other specifications of the allotted unit and providing the time frame within which the next instalment was to be paid.
- v. That a buyer's agreement was executed between the original allottee and respondent on 15.01.2010. As per clause 11(a) of the buyer's agreement, the respondent had to deliver the possession of the unit within a period of 36 months from the date of start of construction plus six months grace period. The construction started on



- 26.08.2010. Therefore, the due date of possession comes out to be 26.08.2013.
- vi. That as per the demands raised by the respondent, based on the payment plan, the complainant has already paid a total sum of Rs. 58,67,320/-, towards the said unit against total sale consideration of Rs. 54,43,255/-.
- vii. That the payment plan was designed in such a way to extract maximum payment from the buyers viz a viz or done/completed. The complainant approached the respondent and asked about the status of construction and also raised objections towards non-completion of the project. It is pertinent to state herein that such arbitrary and illegal practices have been prevalent amongst builders before the advent of RERA, wherein the payment/demands/ etc. have not been transparent and demands were being raised without sufficient justifications and maximum payment was extracted just raising structure leaving all amenities/finishing/facilities/common area/road and other things promised in the brochure, which counts to almost 50% of the total project work.
- viii. That in terms of clause 11(a) of the said buyer's agreement, the respondent was under obligation to complete the construction and to offer the possession on or before 26.08.2013. That complainant approached in person to know the fate of the construction and offer of possession in terms of the said buyer's agreement, the respondent



misrepresented to complainant that the construction will get completed soon.

- ix. That the complainant after many requests and emails; received the offer of possession on 17.04.2018. That along with the above said letter of offer of possession, the respondent raised several illegal demands on account of the following which are actually not payable as per the builder buyer agreement:
- a. Advance monthly maintenance for 12 months of Rs. 58,590/-
  - b. Electric meter charges of Rs. 9,103/-
  - c. Gas connection charges of Rs.17,213/-
  - d. Electricity connection charges of Rs.39,349/-
  - e. Electrification charges of Rs.25,399/-
  - f. HVAT of Rs. 45,561/-
- x. That offering possession by the respondent on payment of charges which the flat buyer is not contractually bound to pay, cannot be considered to be a valid offer of possession. These charges are never payable by the complainant as per the agreement, by the complainant and hence the offer of possession.
- xi. Advance maintenance being charged for one year from the complainant by the respondent which is illegal and unjustified and against the law - That the respondent asked for 12 months of advance maintenance charges amounting to Rs.58,590/- from the complainant which is absolutely illegal and against the laws of the land and having no option left complainant paid the same also. The responsibility for upkeep and maintenance of common area is





collective. The contributions made for the same are in the form of a stipulated fee to manage expenses for the management and repair of any damage to the same. This amount contributed for operational expenditure on the common areas of the premises is called common areas maintenance. The common area maintenance charges are calculated on a monthly basis, based on actual charges and are then paid by the owners of the units to the maintenance agency or to the Association which manages the complex where the units are situated. Hence these are paid monthly once the expenses have been incurred and billed to the owner of the unit and therefore demanding an amount of Rs. 75,600/- as a deposit of annual common area maintenance charges along with the final payment is unjustified and illegal and therefore needs to be withdrawn immediately as the same is not payable by the complainant at all.

- xii. That the respondent asking for electric meter charges of Rs. 9,103/- and electrification charges of Rs. 39,349/- from the complainant is absolutely illegal as the cost of the electric meter in the market is not more than Rs. 2,500/- hence asking for such a huge amount, when the same is not a part of the buyer's agreement is unjustified and illegal and therefore needs to be withdrawn immediately. So are the other demands required to be withdrawn, as per details provided above and those which are not a part of the buyer's agreement.



- xiii. That the respondent asked the complainant to sign the indemnity bond as pre-requisite condition for handing over of the possession. The complainant raised objection to above said pre-requisite condition of the respondent as no delay possession charges was paid to the complainant but respondent instead of paying the delay possession charges clearly refuse to handover possession if the complainant do not sign the aforesaid indemnity bond. Further, the complainant was left with no option instead of signing the same.
- xiv. That the complainant in some instalments have paid delayed charges @15% while making payment and have always made the payment as per the construction linked plan attached to the agreement. The allottee has approached the company with a request for payment of compensation, despite not making payments on time and on the assurance that they shall make the payment of the delay payment charges as mentioned above along with all other dues to the company. In **Capital Greens Flat Buyer Association and Ors. V. DLF Universal Ltd., Consumer Case no. 351 of 2015**, it was held that the execution of indemnity cum undertaking would defeat the provisions of section 23 and 28 of the Indian Contract Act, 1872 and therefore would be against public policy, besides being an unfair trade practice.
- xv. That the complainant after many follow ups and reminders, and after clearing all the dues and fulfilling all one-sided demands and



formalities as and when demanded by the respondent got the physical handover of the unit. Further, the respondent issued handover advice letter. Thereafter, the respondent issued handover letter dated 02.05.2018 on account of handing over the physical possession of the unit.

- xvi. That on 27.07.2020, the government officials entered our society and demolished various segments, including the boundary wall, badminton court, garden etc. On asking the reason, government officials said that the structure has been constructed on revenue rasta and company does not hold any rights over the same. After demolition, our gate society became open area for nearby villagers/farmers of the village Maidawas and people started using it as common area and due to which our family and professional lives got disrupted. The complainant is in utter fear of trespassing and other criminal activities. It was very shocking and surprising for complainant that company like Emaar has done such illegal act and cheated complainant not disclosing that there is revenue rasta going from the centre of the society. Complainant felt cheated and found himself to be living in an open area, open to trespassers and even complainant has the CCTV footage of the unknown trespassers entering late night and tangling within the society. Due to said act there is an atmosphere of life-threatening danger, extreme mental pressure and fear in complainant. On the bases of the assurance of



the company that there will be 24X7 security and gated society, the complainant had booked flat in the project of the company believing that his dependents will be safe in the society but due to the above said act on behalf of the company, the complainant is going through extreme mental trauma.

- xvii. That vide email dated 26.08.2020, company informed complainant that the issue pertaining to revenue rasta has been permanently resolved and reconstruction of boundary walls will commence soon. On receiving the said email, we asked the company to provide complainant the copy of the documents/ agreement/papers that has been executed but till date company even after repeated reminders has failed to provide the same. It is pertinent to note here that ironically it is false today also that issue pertaining to revenue rasta has been permanently resolved. This is an absolute misrepresentation on the part of company and making mockery of whole issue. This issue has been raised in all meetings with the facilities team, but no legal document has been shared with complainant so far.
- xviii. That the respondent has arbitrarily demanded for payment of interest on account of delayed payment at the rate of 15%-24% whereas the compensation for delay stipulated for the buyers is merely Rs. 5/- per sq. ft. The complainant is actually entitled to interest @ 9.30% per annum on the total sum paid by him. The

Hon'ble Supreme Court has in **Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan**, (2019) 5 SCC 725 in a case involving similar contractual clauses held:

*"7. In view of the above discussion, we have no hesitation in holding that the terms of the apartment buyer's agreement dated 8-5-2012 were wholly one-sided and unfair to the respondent flat purchaser. The appellant builder could not seek to bind the respondent with such one-sided contractual terms."*

- xix. That mere execution of the sale deed will not deprive the complainant of their rights to seek compensation as has been held by the Hon'ble Supreme Court in **Wg. Cdr. Arifur Rahman Khan & Aleya Sultana and Ors. V. DLF Southern Homes Pvt. Ltd.**
- xx. That as per section 18 of the Act, the promoter is liable to pay delay possession charges to the allottees of a unit, building or project for a delay or failure in handing over of such possession as per the terms and agreement of the sale. The complainant is entitled to get delay possession charges with interest at the prescribed rate from date of application/ payment to till the realization of money under sections 18 & 19 of the Act.

**C. Relief sought by the complainant**

5. The complainant has filed the present compliant for seeking following reliefs:
- i. Direct the respondent to pay interest on account of delay in offering possession on the amount paid by the complainant as sale consideration of the said flat from the due date of possession till the date of delivery of possession.



- ii. Direct the respondent to refund the PLC collected under from complainant amounting to ₹ 2,79,000/- on account of park facing.
  - iii. Direct the respondent to refund the amount collected under different heads alongwith offer of possession which complainant was not liable to pay as per the payment plan.
  - iv. Direct the respondent to return amount unreasonably charged by respondent by increasing sale price after execution of the buyer's agreement between respondent and complainant.
  - v. Direct the respondent to issue necessary instruction to complainant's bank to remove the lien marked over fixed deposit in favour of respondent on the pretext of future payment of HVAT.
  - vi. Direct the respondent to get the clear title of revenue rasta and produce the document to that effect.
  - vii. Direct the respondent to refund the amount collected on account of club membership charges amounting to Rs. 75,000/-.
  - viii. Pass such order or further order(s) 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 present complaint is not maintainable before the Hon'ble Authority under the Act and the Rules. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 15.01.2010. 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 the 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 complainant for seeking interest cannot be called in to aid in derogation and ignorance of the provisions of the buyer's agreement. It is submitted that the interest for the alleged delay demanded by the complainant is beyond the scope of the buyer's agreement and the same cannot be demanded by the complainant being beyond the terms and conditions incorporated in the buyer's agreement.
  - ii. That the complainant is estopped by his own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. It is submitted that the complainant has already obtained possession of the unit in question vide the letter of offer of



possession dated 17.04.2018 and has, further, executed a conveyance deed regarding the unit in question. The transaction between the complainant and the respondent stands satisfied. The reliefs sought in the present complaint is false and frivolous and the same is barred by estoppel.

- iii. That the instant complaint is barred by limitation. It is also pertinent to mention that the complainant filed the complaint before HRERA, Gurugram after the execution of the conveyance deed as all the terms and conditions as per the buyer's agreement stands fulfilled in the eyes of law. It is also submitted that the present complaint has been filed only to harass the respondent.
- iv. That the present complaint is not maintainable in law or on facts. The provisions of the Act are not applicable to the project in question. The application for issuance of occupation certificate in respect of the tower in which the apartment in question is located was made on 29.06.2017 and the occupation certificate was thereafter issued on 08.01.2018. 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, 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.

- v. That the complainant is not an "allottee" but investor who has booked the unit in question as a speculative investment in order to earn rental income/profit from its resale. The unit in question has been booked by the complainant as a speculative investment and not for the purpose of self-use as a residence.
- vi. That the original allottees, Mrs. Kala Shankar and V. Sankaranarayanan, had approached the respondent and expressed interest in booking of an apartment in the residential group housing colony developed by the respondent known as "Emerald Estate Apartments" situated in Emerald Estate, Sector 65, Gurgaon. Prior to the booking, the original allottees as well as the complainant conducted extensive and independent enquiries with regard to the project and only after being fully satisfied on all aspects, that they took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question.



- vii. That thereafter the original allottees vide an application form applied to the respondent for provisional allotment of the unit. Pursuant thereto, unit bearing no EEA-B-F03-04, located on the 3<sup>rd</sup> Floor, Tower-B was allotted vide provisional allotment letter dated 18.08.2009. The original allottees 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 that they shall remit every installment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the original allottees and proceeded to allot the unit in question in this favor. Accordingly, the subsequent allottees as well as the complainant undertook to be bound by the terms and conditions of the application form/allotment letter.
- viii. Thereafter, a buyer's agreement dated 15.01.2010 was executed between the original allottees and the respondent. That pursuant thereto, the original allottees, made a request for transfer of the said allotment in the name of the subsequent allottee (M/s Rosemary Hospitality Pvt. Ltd.). Accordingly, the parties submitted the agreement to sell dated 19.08.2010 along with necessary request letters, indemnities and affidavits. The respondent vide its nomination letter dated 04.10.2010, confirmed the said transfer in favour of the subsequent allottee.



- ix. That pursuant thereto, the subsequent allottee (M/s Rosemary Hospitality Pvt. Ltd.), made a request for transfer of the said allotment in the name of the other subsequent allottee (Mr. Rahul Sharma and Ms. Krishna Sharma). Accordingly, the parties submitted the agreement to sell dated 30.03.2010. That the respondent vide its nomination letter dated 03.11.2011, confirmed the said transfer in favour of the subsequent allottee. That pursuant thereto, the subsequent allottees, made a request for transfer of the said allotment in the name of the complainant. Accordingly, the parties submitted the agreement to sell dated 29.01.2017 along with necessary request letters, indemnities and affidavits. That the respondent vide its nomination letter dated 06.04.2017, confirmed the said transfer in favour of the complainant.
- x. That the complainant herein stepped into the shoes of the original allottees on 06.04.2017, on which date the complainant was well aware about the status of the project and that the OC for the same was already applied for. Upon receipt of the OC on 08.01.2018, the complainant was immediately offered the possession on 17.04.2018, thus neither any prejudice was caused to the complainant nor was there any delay in delivery of possession to the complainant. The complainant at the time of purchasing the unit in question was well aware of the status of the project and the unit in question and hence,



cannot claim any prejudice, loss, delay or raise any other grievance. The complaint is liable to be dismissed on this ground alone.

- xi. That the clause 13 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. That the original allottees, the subsequent allottees as well as the complainant, having defaulted in payment of instalments, is thus not entitled to any compensation or any amount towards interest under the buyer's agreement. It is submitted that the complainant by way of instant complaint is demanding interest for alleged delay in delivery of possession. The interest is compensatory in nature and cannot be granted in derogation and ignorance of the provisions of the buyer's agreement.
- xii. It is further submitted that despite there being a number of defaulters in the project, the respondent had to infuse funds into the project and have diligently developed the project in question. The respondent applied for occupation certificate on 29.06.2017 and the same was thereafter issued vide memo bearing no. ZP-441/SD(BS)/2017/536 dated 08.01.2018.
- xiii. That the construction of the project/allotted unit in question already stands completed and the respondent has already offered



possession of the unit in question to the complainant 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. That the complainant was offered possession of the unit in question through letter of offer of possession dated 17.04.2018. The complainant was 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 complainant. However, the complainant approached the respondent with request for payment of compensation for the alleged delay in utter disregard of the terms and conditions of the buyer's agreement. The respondent explained to the complainant that he is not entitled to any compensation in terms of the buyer's agreement on account of default in timely remittance of instalments as per schedule of payment incorporated in the buyer's agreement. The respondent earnestly requested the complainant to obtain possession of the unit in question and further requested the complainant to execute a conveyance deed in respect of the unit in question after completing all the formalities regarding delivery of possession. However, the complainant did not pay any heed to the legitimate, just and fair requests of the respondent and threatened the respondent with institution of unwarranted litigation.



- xiv. That it is pertinent to mention that after execution of the unit handover letter dated 02.05.2018 and obtaining of possession of the unit in question, the complainant is left with no right, entitlement or claim against the respondent. It needs to be highlighted that the complainant has further executed a conveyance deed dated 07.08.2018. 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.
- xv. That 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 subsequent purchaser can be entitled to, would be fact dependent. However, it cannot be said that a subsequent purchaser who steps into the shoes of an original allottee of a housing project in which the builder has not honoured its commitment to deliver the flat within a stipulated time, cannot expect any-even reasonable time, for the performance of the builder obligation...*"
- xvi. That several allottees, including the complainant, have defaulted in timely remittance of payment of installments which was an essential, crucial and an indispensable requirement for conceptualization 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. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

**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 office 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 complainant 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**

12. One of the contentions of the respondent is that the authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the buyer's agreement executed between the parties. The respondent further submitted that the provisions of the Act





are not retrospective in nature and the provisions of the Act cannot undo or modify the terms of buyer's agreement duly executed prior to coming into effect of the Act.

13. 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 hon'ble Bombay High Court in ***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."*

14. Also, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya*** 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."*

15. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the buyer's 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 and are not unreasonable or exorbitant in nature.

#### **F.II Objection regarding the complaint being barred by limitation**

16. The counsel for the respondent submitted that the complainant has filed the present complaint on 10.05.2022 after execution of conveyance deed



on 07.08.2018 i.e., after a lapse of 3 years and 9 months. Therefore, the present complaint is barred by limitation. But the counsel for the complainant submitted that limitation is not applicable qua these proceedings, and submitted a copy of order passed Hon'ble Real Estate Regulatory Authority, Punjab wherein it has been held that the benefits under the Act are not barred by limitation. It was also submitted that the limitation period for filing the complaint does not expire in view of directions of Hon'ble Supreme Court of India, New Delhi in suo moto proceedings titled as **cognizance for extension of limitation with miscellaneous application no. 29 of 2022 in miscellaneous application 665 of 2021 in suo moto writ petition(C) no. 3 of 2020.**

17. Though both the parties through their respective counsel advanced submissions with regard to the maintainability of the complaint on the ground of the limitation but in view of settled proposition of law, the case of complainant cannot be thrown away being barred by limitation. As discussed earlier, the subject unit was allotted on 18.08.2009, a buyer's agreement in this regard was executed on 15.01.2010. Though the possession of the unit was to be offered on or before 26.08.2013 after completion of the project but the same was offered only on 17.04.2018 after receipt of occupation certificate on 08.01.2018 and ultimately leading to execution of conveyance deed of the same on 07.08.2018. So, limitation if any, for a cause of action would accrue to the complainant w.e.f. 07.08.2018. The present complaint seeking delay possession



charges and other reliefs was filed on 10.05.2022 i.e., beyond three years w.e.f. 07.08.2021. But in view of authoritative pronouncement of the Hon'ble Apex Court in *Suo Moto Writ Petition (C) No. 3 of 2020* vide order dated 10.01.2022, the period in between 15.03.2020 till 28.02.2022 would stand excluded while calculating the period of limitation and all persons shall have a limitation period of 90 days from 01.03.2022. The relevant para of the said order is reproduced as under:

*"1. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.*

*...  
III. In the cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply."*

18. In view of the above, the present complaint is filed within the limitation.

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

19. It is pleaded on behalf of respondent that complainant is not "allottee" but investor who has 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 complainant is buyer and has 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."*

20. 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 complainant is allottee as the subject unit allotted to him 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.IV Objection regarding exclusion of time taken by the competent authority in processing the application and issuance of occupation certificate**

21. 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 30.06.2017 and thereafter vide memo no. ZP-441/SD(BS)/2017/536 dated 08.01.2018, 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 08.01.2018 that an incomplete application for grant of OC was applied on 30.06.2017 as fire NOC from the competent authority was granted only on 20.12.2017 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 30.11.2017. The District Town Planner, Gurugram and Senior Town Planner, Gurugram has submitted requisite reports' about this project on 08.09.2017 and 08.09.2017 respectively. As such, the application submitted on 30.06.2017 was incomplete and an incomplete application is no application in the eyes of law.

22. 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 20.12.2017 and consequently the concerned authority has granted occupation certificate on 08.01.2018. Therefore, in view of the deficiency in the said application dated 30.06.2017 and aforesaid reasons, no delay in granting occupation certificate can be attributed to the concerned statutory authority.

**F.V 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.**

23. The respondent contended that at the time of taking possession of the subject unit vide unit hand over letter dated 02.05.2018, the complainant had certified himself to be fully satisfied with regard to the measurements, location, direction, developments et cetera of the unit and also admitted and acknowledge that he does not have any claim of any nature whatsoever against the respondent and that upon acceptance of possession, the liabilities and obligations of the respondent as enumerated in the allotment letter/buyer's agreement, stand fully



satisfied. The relevant para of the unit handover letter relied upon reads as under:

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

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

24. 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.
25. In light of the aforesaid order, the complainant is 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.VI Whether the execution of the conveyance deed extinguishes the right of the allottee to claim delay possession charges?**

26. The respondent submitted that the complainant had executed the conveyance deed on 07.08.2018 and therefore, the transaction between the complainant and the respondent has been concluded and no right or liability can be asserted by respondent or the complainant against the other. Therefore, the complainant is estopped from claiming any interest in the facts and circumstances of the case.





27. 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 complainant 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**, the relevant paras are reproduced herein below:

*"34 The developer has not disputed these communications. Though these are four communications issued by the developer, the appellants submitted that they are not isolated aberrations but fit into a pattern. The developer does not state that it was willing to offer the flat purchasers possession of their flats and the right to execute conveyance of the flats while reserving their claim for compensation for delay. 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."*

28. 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 complainant cannot be precluded from his right to seek delay possession charges from the respondent-promoter.

**G. Findings on the reliefs sought by the complainant**

**G.I Delay possession charges**

29. **Relief sought by the complainant:** Direct the respondent to pay interest on account of delay in offering possession on the amount paid by the complainant as sale consideration of the said flat from the due date of possession till the date of delivery of possession.

30. 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. 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."*

31. 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."*

32. 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 complainant 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.

33. **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 09.04.2022. 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.

34. **Entitlement of delay possession charges to the complainant being subsequent allottee w.e.f. due date of handing over possession or w.e.f. the date of nomination letter/endorsement (i.e. date on which he became allottee)-**
35. The counsel for the complainant is seeking delay possession charges w.e.f. due date as per the buyer's agreement i.e., 26.08.2013. It has further been stated that the complainant was endorsed as an allottee in the above project (as subsequent allottees) on 06.04.2017. The occupation certificate of the project was received on 08.01.2018. The counsel for the complainant relies his claim upon order of this authority in CR No. 3395 of 2020 vide order dated 12.08.2021 wherein in a similar matter, the respondents were directed to pay the delay possession charges from the due date of possession till the offer of possession plus two months.
36. The counsel for the respondent states that the claim of the complainant arises from the date the complainant was endorsed as an allottee i.e., 06.04.2017. In this regard, he refers to the orders passed by this authority in CR No.804 of 2022 dated 08.09.2022 wherein the DPC has been allowed w.e.f. the date of nomination.
37. The authority observes that the issue w.r.t. the entitlement of delay possession charges to the allottees being subsequent allottees is



concerned, the authority has exhaustively decided the said issue in **CR no. 4031 of 2019 titled as Varun Gupta Vs. Emaar MGF Land Ltd.** wherein it has been held that where subsequent allottee had stepped into the shoes of original allottee after the due date of handing over possession but before the coming into force of the Act, the delayed possession charges shall be granted w.e.f. the date of nomination letter issued by the respondent.

38. The authority observes that in the present complaint, the subject unit has been endorsed in favour of the complainant vide nomination letter dated 06.04.2017 i.e., after the due date of handing over possession but before the coming into force of the Act. Therefore, in furtherance of **Varun Gupta Vs. Emaar MGF Land Ltd. (supra)**, the complainant is entitled to delay possession charges w.e.f., the date of nomination letter i.e., 06.04.2017.
39. **Admissibility of delay possession charges at prescribed rate of interest:** The 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.*

40. 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.
41. 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., 28.03.2023 is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
42. **Rate of interest to be paid by complainant/allottee 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—*

- (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;"*

43. 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.
44. 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 15.01.2010, 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 complainant in the present complaint is subsequent allottee and had purchased the unit in question from the subsequent allottees and thereafter, the respondent had acknowledged the same vide nomination letter dated 06.04.2014. In terms of the order passed by the authority in complaint titled as ***Varun Gupta Versus Emaar MGF Land Ltd. (CR/4031/2019)***, the complainant





is entitled to delayed possession charges w.e.f. the date of nomination letter dated 06.04.2017 as he has stepped into the shoes of original allottee after the due date of handing over possession but before the coming into force of the Act. In the present case, the complainant was offered possession by the respondent on 17.04.2018 after obtaining occupation certificate dated 08.01.2018 from the competent authority. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 15.01.2010 executed between the parties.

45. 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 08.01.2018. However, the respondent offered the possession of the unit in question to the complainant only on 17.04.2018, 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, he 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. It is further clarified that the delay possession charges shall be payable from the date of nomination letter i.e. 06.04.2017 till the expiry of 2 months from the date of offer of possession (17.04.2018) which comes out to be 17.06.2018. Also, the complainant is 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.

46. 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 delay possession charges at prescribed rate of the interest @ 10.70 % p.a. w.e.f. 06.04.2017 till 17.06.2018 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

#### **G.II Preferential location charges**

47. The counsel for the complainant submitted that the amount towards PLC shall be refunded on the ground of park facing site not being provided since there is a wall in front of the unit of the allottee. The counsel for the respondent states that the no pleading w.r.t. refund of PLC has been made in the complaint. He further states that the complainant is a subsequent allottee who was well aware of the attributes of the placement of the unit at the time of purchasing the same from the original allottee and therefore, he has no subsequent right to raise the issue at this stage. The

counsel for the complainant states that wall in front was constructed after he purchased the same.

48. The authority observed that as per clause 1.2(a) and (e) of the buyer's agreement, following provisions have been made regarding PLC:

***"1.2 Sale Price for Sale of Unit***

***(a) Sale Price***

- i. *The sale price of the Unit ("Total Consideration") payable by the Allottee(s) to the Company includes the basis sale price ("Basic Sale Price") of Rs.4462605/-, cost towards car parking space(s) of Rs.250000/-, External Development Charges ('EDC') of Rs. 334800/-, Infrastructure Development Charges ('IDC') of Rs. 41850/- and applicable PLC of Rs. 279000/-, if any and Club Membership charges of Rs. 75000/-. Save as aforesaid, the Allottee(s) understands that the Total Consideration does not include any other charges, as reserved in this Buyer's Agreement and the Allottee(s) shall be under an obligation to pay such additional cost as may be intimated to him by the company, from time to time. The Allottee(s) specifically understands that time is the essence with respect to the Allottee(s)' obligations and undertakes to make all payments in time, without any reminders from the Company through A/c Payee Cheque(s)/ Demand Draft(s) payable at Delhi. The Allottee(s) agrees that the payments on due dates as set out in Annexure - 3 shall be made promptly and the Company shall not be required to send any notice or demand for payment as per the Schedule of Payment.*

.....

***(e) Preferential Location Charges***

- i. *The proportionate amount of the preferential location charges ('PLC') for certain Units in the Project and if the Allottee(s) opts for any such Unit are included in the Total Consideration payable by the Allottee(s) as set out in clause 1.2(a)(i) above for the said Unit.*
- ii. *The Total Consideration for preferentially located Unit is calculated at additional rate of as applicable for the Unit located in the Project. The Allottee(s) understands that if due to change in layout plan, the location of any Unit, whether preferentially located or otherwise is changed to any other preferential location, where the PLC are higher than the rate as mentioned hereinabove, then in such a case the Allottee(s) shall be liable to pay the PLC as per the revised PLC decided by the Company within thirty (30) days of any such communication received by the Allottee(s) in this regard. However, if due to the change in the layout plan the Unit ceases to*



*be preferentially located, then in such an event the Company shall be liable to refund only the amount of preferential location charges paid by the Allottee(s) without any interest and/or compensation and/or damages and/or costs of any nature whatsoever and such refund shall be adjusted in the following installment for the Unit."*

Also, as per 'ANNEXURE - 3' of the buyer's agreement, it is stated that 'Park Facing' PLC is Rs.2,79,000/- [Page 82 of complaint].

49. Needless to say, that the buyer's agreement executed between the parties is binding on them and they are not entitled to avoid any terms or conditions contained therein except for the provisions which have been abrogated by the Act itself or where there are reasons to believe that the same were incorporated in the agreement by the promoter by taking benefit of his being in dominant position and the allottee had no option but to sign on the dotted lines.
50. The authority has gone through the photographs placed on record by the respondent. There is green area in front of the unit of the allottee. Therefore, in the light of the photographs placed on record by the respondent and clauses of the buyer's agreement, it can be concluded that the unit is still preferentially located, and the buyer's agreement clearly provides that the allottee had agreed to pay preferential location charges for preferentially located unit and such preferential location charges are payable by the allottee in the manner and within such time as stated in the schedule of payment. Thus, the authority is of the view that the amount levied towards preferential location charges is justified.



**G.III Refund of amount charged towards different heads at time of offer of possession**

51. **Relief sought by the complainant:** Direct the respondent to refund the amount collected under different heads alongwith offer of possession which complainant was not liable to pay as per the payment plan.

• **Advance maintenance charges-**

52. The counsel for the complainant contended that the respondent asked for 12 months of advance maintenance charges amounting to Rs.58,590/- from the complainant which is absolutely illegal and against the laws of the land and having no option left, the complainant paid the same also. On the contrary, it has been contended on behalf of the respondent that the said charges have been demanded as per the terms of the buyer's agreement executed inter se parties.

53. The authority is of the view that the respondent has demanded an amount of Rs. 58,590/- (@Rs.3.5 per sq. ft. + GST @ 18% for 12 months) towards advance maintenance charges vide letter of offer of possession dated 17.04.2018. The authority is of the view that the same has been charged as per clause 18 of the buyer's agreement. Therefore, the complainant is directed to pay the same.

• **Electricity connection charges and Electric meter charges**

54. The counsel for the complainant contended that the respondent is asking for electric meter charges of Rs. 9,103/- and electric connection charges of Rs. 39,343/- from the complainant is absolutely illegal as the cost of



the electric meter in the market is not more than Rs. 2,500/- hence asking for such a huge amount, when the same is not a part of the builder buyer agreement is unjustified and illegal and therefore needs to be withdrawn immediately.

55. The following provision has been made in the buyer's agreement in clause 10 in respect of the said charges which reads as under:

**10. RIGHTS AND OBLIGATIONS OF THE ALLOTTEE(S)**

**(a) Electricity, Water and Sewerage Charges**

*The electricity, water and sewerage charges shall be borne and paid by the Allottee(s). The Allottee(s) shall plan and distribute its electrical load in conformity with the electrical systems installed by the Company. The Allottee(s) undertakes to pay additionally to the Company on demand the actual cost of the electricity, water and sewer consumption charges and/or any other charge which may be payable in respect of the same Unit. The Allottee(s) undertakes that it shall not apply to Haryana Vidyut Prasaran Nigam Limited ('HVPNL') or any other electricity supply assignee(s) substituted in his/her/their/its place with the prior approval of the Company who may at its sole discretion permit the same on such terms and conditions and charges as it may deem fit. The Allottee(s) shall pay to the Company transfer charges, as applicable from time to time in respect of such substitutions or nominations."*

56. The authority has decided this in the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.** wherein the authority has held that in this case, apart from bearing proportionate charges for bulk supply of electricity connection to the project, the allottee has also to bear the individual meter connection expenditure from the bulk supply point to his unit.

57. In view of the above, the complainant is directed to pay electric connection charges as well as electric meter charges.



- **Electrification charges**

58. The authority has decided this issue in the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.** wherein the authority has held that the basic sale price of a unit also include electrification as street lighting is an integral part of internal development works and also includes disposal of sewage and sullage, water, fire protection and fire safety requirements, streetlight, electricity supply, transformers, etc. These internal development works have to be done by the promoter.
59. In the considered opinion of this authority, the promoter cannot charge electrification charges from the allottees while issuing offer of possession letter in respect of the subject unit even though there is any provision in the builder buyer's agreement to the contrary.

**G.IV Direct the respondent to return amount unreasonably charged by respondent by increasing sale price after execution of the buyer's agreement between respondent and complainant.**

60. The authority observes that as per schedule of payment annexed with the buyer's agreement (annexure C2, page 82 of complaint), the total sale consideration is Rs.54,43,255/- which is inclusive of basic sale price, PLC, EDC and IDC, club membership and car parking & excluding taxes. Whereas as per statement of account dated 09.04.2022 (annexure C6, page 108 of complaint), the sale consideration has been increased to Rs.55,37,997/- (excluding taxes) i.e. an increase of Rs.94,742/-. Accordingly, Rs.94,742/- have been charged extra.



61. Therefore, the respondent is directed to delete the said amount from the total sale consideration and return the excess amount to the complainant.

**G.V Direct the respondent to issue necessary instruction to complainant bank to remove the lien marked over fixed deposit in favour of respondent on the pretext of future payment of HVAT.**

62. The complainant is contending that he has been additionally burdened to give lien marked FD for HVAT amounting to Rs.45,561/- for the period w.e.f. 01.04.2014 till 30.06.2017. On the other hand, the respondent submitted that the HVAT has been validly and legally charged by the respondent in terms of the buyer's agreement and the same are statutory charges and are liable to be passed on to the Government by the respondent.

63. The authority has decided the issue w.r.t. liability of payment of HVAT in complaint titled as *Varun Gupta. Versus Emaar MGF Land Ltd. (CR/4031/2019)* wherein it has been held that the promoter is entitled to charge VAT from the allottee for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT) under the amnesty scheme. However, the promoter shall not charge any VAT from the allottees/prospective buyers during the period 01.04.2014 to 30.06.2017 since the same was to be borne by the promoter-developer only.

64. In the present complaint, the respondent has demanded Rs.45,561/- towards lien marked FD for HVAT liability post 01.04.2014 till 30.06.2017 vide letter of offer of possession dated 17.04.2018. In light of order stated





above, the respondent shall not demand the same and the lien so marked be removed. Also, information about the same be sent to the concerned bank by the promoter as well as by the complainant along with a copy of this order.

**G.VI Direct the respondent to get the clear title of revenue rasta and produce the document to that effect.**

65. The counsel for the complainant contended that the project has been constructed on revenue rasta and the company does not hold any rights over the same. On 27.07.2020, government officials entered our society and demolished the various segments, including the boundary wall, badminton court, garden etc. It was contended on behalf of the respondent that the badminton court, boundary wall etc. have been duly reconstructed and there is no reason for the complainant to entertain any apprehensions.

66. The authority is of the view that the issue with respect to the revenue rasta does not lie within the domain of the authority. The complainant is directed to approach the competent authority in respect of the said relief. Also, the complainant is at liberty to approach the adjudicating officer for seeking compensation, if any, as per the provisions of the Act.

**G.VII Direct the respondent to refund the amount collected on account of club membership charges amounting to Rs. 75,000/-.**

67. The complainant is also seeking refund of the club membership charges on account of non-completion of the club facility. Counsel for the respondent states that the club building stands completed and the OC for



the same shall be submitted within a week with an advance copy to the complainant.

68. The authority observes that the complainant had agreed to pay club membership registration charges amounting to Rs.75,000/- in terms of clause 3 of the buyer's agreement. While deciding the issue of club membership charges in CR/3203/2020 titled as Vijay Kumar Jadhav Vs. M/s BPTP Limited and anr. decided on 26.04.2022, the authority has observed as under:

*"79. The authority concurs with the recommendation made by the committee and holds that the club membership charges (CMC) shall be optional. The respondent shall refund the CMC if any request is received from the allottee. Provided that if an allottee opts out to avail this facility and later approaches the respondent for membership of the club, then he shall pay the club membership charges as may be decided by the respondent and shall not invoke the terms of flat buyer's agreement that limits CMC to Rs.1,00,000/-."*

69. In view of the above, the authority holds that the club membership charges shall be optional. The respondent shall refund the club membership charges if any request is received from the complainant-allottee. Provided that if he opts out to avail this facility and later approaches the respondent for membership of the club, then he shall pay the club membership charges as may be decided by the respondent and shall not invoke the terms of buyer's agreement that limits club membership charges to Rs.75,000/-.

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

70. 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 from the date of nomination i.e. 06.04.2017 till 17.06.2018 i.e. expiry of 2 months from the date of offer of possession (17.04.2018). 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.
- ii. **PLC-** The respondent is justified in charging the preferential location charges in the facts and circumstances of the present case. Thus, the complainant is liable to pay the same.
- iii. **Increase in sale price after execution of buyer's agreement:** The respondent is directed to delete an amount of Rs.94,742/- from the total sale consideration and return the excess amount to the complainant.
- iv. **Electrification charges:** The respondent cannot charge electrification charges from the allottees while issuing offer of possession letter in respect of the subject unit even though there is any provision in the builder buyer's agreement to the contrary.
- v. **Lien marked FD on account of HVAT:** The respondent shall not demand Rs.45,561/- towards lien marked FD for HVAT liability post 01.04.2014 till 30.06.2017 vide letter of offer of possession dated



17.04.2018 and the lien so marked be removed. Also, information about the same be sent to the concerned bank by the promoter as well as by the complainant along with a copy of this order.

- vi. **Club membership charges-** The respondent shall refund the club membership charges if any request is received from the complainant-allottee. Provided that if he opts out to avail this facility and later approaches the respondent for membership of the club, then he shall pay the club membership charges as may be decided by the respondent and shall not invoke the terms of buyer's agreement that limits club membership charges to Rs.75,000/-.
- vii. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.

71. Complaint stands disposed of.

72. File be consigned to registry.

  
(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

  
(Ashok Sangwan)

Member

Dated: 28.03.2023