BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**:**	**2142 of 2022**
Complaint filed on	**:**	**17.05.2022**
First date of hearing	**:**	**17.08.2022**
Order reserved on	**:**	**24.11.2022**
Order pronounced on	**:**	**28.03.2023**

1. Shri Ashutosh Goutam
2. Shri Umakant Goutam
Both RR/o: H-702 Emerald Estate Apartment,
Sector 65, Gurugram, Haryana. **Complainants**

Versus

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

Coram:
Shri Ashok Sangwan **Member**
Shri Sanjeev Kumar Arora **Member**

Appearance:
Shri Gaurav Rawat Advocate for the complainants
Shri J.K. Dang Advocate for the respondent

ORDER

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

obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter se them.

2. Since the buyer's agreement has been executed on 09.01.2010 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	"Emerald Estate Apartments at Emerald Estate" in Sector 65, Gurugram, Haryana.
2.	Project area	25.499 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	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/ not registered	**Registered vide no. 104 of 2017 dated 24.08.2017 for 82768 sq. mtrs.**
	HRERA registration valid up to	**23.08.2022**
6.	Applied for occupation certificate on	20.07.2020 [Annexure R13, page 195 of reply]
7.	Occupation certificate granted on	11.11.2020 [annexure R14, page 196 of reply]
8.	Provisional allotment letter dated	24.09.2009 [annexure R2, page 55 of reply]
9.	Unit no.	EEA-H-F07-03, 7th floor, block H [annexure C2, page 50 of complaint]
10.	Unit measuring	1020 sq. ft. [annexure C2, page 50 of complaint]
11.	Date of execution of buyer's agreement	09.01.2010 [annexure C2, page 49 of complaint]
12.	Possession clause	***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.***

		[Emphasis supplied] [Page 65 of complaint]	
13.	Date of commencement of construction as per statement of account dated 27.04.2022 at page 100 of complaint	26.08.2010	
14.	Due date of delivery of possession as per clause 11(a) of the said agreement	26.08.2013 **[Note:** Grace period is not included**]**	
15.	Complainants are subsequent allottee	The nomination letter was issued in favour of the complainants on 31.12.2019 [Page 150 of reply] in pursuance of agreement to sell dated 12.09.2019 executed between the complainants and the original allottees (Manu Shukla and Bhavna Shukla).	
16.	Total consideration	As per payment plan annexed with the agreement	As per statement of account dated 27.04.2022 at page 100 of complaint
		Rs.37,98,120/-	Rs.40,80,150/-
17.	Total amount paid by the complainants as per statement of account dated 27.04.2022 at page 100 of complaint	Rs.41,01,125/-	
18.	**Date of offer of possession to the complainants**	**21.11.2020** [annexure C4, page 94 of complaint]	
19.	Delay in handing over possession w.e.f. 26.08.2013 till 21.01.2021 i.e. date of offer of possession (21.11.2020) + 2 months	7 year 4 months 26 days	
20.	Unit handover letter issued in favour of the complainants on	15.12.2020 [Annexure R17, page 208 of reply]	

21.	Conveyance deed executed between the complainants and the respondent on	14.10.2021 [Annexure R18, page 209 of reply]

B. Facts of the complaint

4. The complainants have 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 complainants 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 complainants 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. Manu Shukla, booked a unit in the project by paying an amount of Rs. 5,00,000/- on 27.08.2009 towards the booking of the said unit bearing no. EEA-H-F07-02 having super area measuring 1020 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 24.09.2009, providing the details of the project, confirming the booking of the unit no. EEA-H-F07-02, in Sector 65, (hereinafter referred to as 'unit') measuring 1020 Sq. Ft (super built-up area) in the aforesaid project of the developer for a total sale consideration of the unit i.e., Rs. 37,98,120/-, 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 09.01.2011. 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 the original allottees subsequently transferred / endorsed the property in favour the complainants vide agreement to sell. The balance amount for obtaining the property which was still under construction was to be paid by the complainants according to the demands raised by the respondent. The respondent promoter, vide their nomination letter dated 31.12.2019, recorded their consent to the transfer.

vii. That as per the demands raised by the respondent, based on the payment plan, the complainants have already paid a total sum of Rs. 41,01,125/-, towards the said unit against total sale consideration of Rs. 37,98,120/-.

viii. That the payment plan was designed in such a way to extract maximum payment from the buyers viz a viz or done/completed. The complainants 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.

ix. 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 complainants 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 complainants that the construction will get completed soon.

x. That the complainants after many requests and emails; received the offer of possession on 21.11.2020. 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 buyer's agreement:

a. Advance monthly maintenance for 12 months of Rs. 42,840.00
b. Electric meter charges of Rs. 9,103.00
c. Gas connection charges of Rs.17,213.00.
d. Electricity connection charges of Rs.28,766.00.
e. Electrification charges of Rs.18,573.00.
f. HVAT of Rs. 10,684/-

xi. 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 complainants as per the agreement, by the complainants and hence the offer of possession.

xii. Advance maintenance being charged for one year from the complainants 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.42,840.00 from the complainants which is absolutely illegal and against the laws of the land and having no option left complainants 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 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. 42,840.00 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 complainants at all.

xiii. That the respondent asking for electric meter charges of Rs. 9,103/- and electrification charges of Rs. 18,573/- from the complainants 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.

xiv. That the respondent asked the complainants to sign the indemnity bond as pre-requisite condition for handing over of the possession. The complainants raised objection to above said pre-requisite condition of the respondent as no delay possession charges was paid to the complainants but respondent instead of paying the delay possession charges clearly refuse to handover possession if the complainants do not sign the aforesaid indemnity bond. Further, the complainants were left with no option instead of signing the same.

xv. That the complainants in some instalment 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.

xvi. That the complainants 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 15.12.2020 on account of handing over the physical possession of the unit.

xvii. 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 gated 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 complainants are in utter fear of trespassing and other criminal activities. It was very shocking and surprising for complainants that company like Emaar has done such illegal act and cheated complainants not disclosing that there is revenue rasta

going from the centre of the society. Complainants felt cheated and found themselves to be living in an open area, open to trespassers and even complainants have 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 among them. On the bases of the assurance of the company that there will be 24X7 security and gated society, the complainants had booked flat in the project of the company believing that their dependents will be safe in the society but due to the above said act on behalf of the company, the complainants are going through extreme mental trauma.

xviii. That vide email dated 26.08.2020, company informed complainants 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 complainants 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 complainants so far.

xix. 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 complainants are actually entitled to interest @ 9.30% per annum on the total sum paid by them. 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."*

xx. That mere execution of the sale deed will not deprive the complainants 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.***

xxi. 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 complainants are 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 complainants

5. The complainants have 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 complainants 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 amount collected under different heads alongwith offer of possession which complainants were not liable to pay as per the payment plan.

iii. Direct the respondent to return amount unreasonably charged by respondent by increasing sale price after execution of the buyer's agreement between respondent and complainants.

iv. Direct the respondent to issue necessary instruction to complainants bank to remove the lien marked over fixed deposit in favour of respondent on the pretext of future payment of HVAT.

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

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

vii. 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 project has been registered under the Act and the registration of the project is valid till 23.08.2022. 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 09.01.2010. 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. The provisions of the Act relied upon by the complainants for seeking interest or compensation cannot be called in to aid in derogation and in negation of the provisions of the buyer's agreement. The complainants cannot claim any relief which is not contemplated under the provisions of the buyer's agreement. Assuming, without in manner admitting any delay on the part of the respondent in delivering possession, it is submitted that the interest

for the alleged delay demanded by the complainant is beyond the scope of the buyer's agreement. The complainants cannot demand any interest or compensation beyond or contrary to the agreed terms and conditions between the parties. The present complaint is liable to be dismissed on this ground alone.

ii. That the complainants are not "allottees" but investors who have 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 complainants as a speculative investment and not for the purpose of self-use as a residence.

iii. That the original allottees, Manu Shukla and Bhavna Shukla, had approached the respondent through their property dealer, and expressed an interest in booking a unit in the residential group housing colony developed by the respondent known as "Emerald Estate Apartments" situated in Emerald Estate, Sector 65, Gurgaon. Prior to make the booking, the complainants conducted extensive and independent enquiries with regard to the project and it was only after the complainants were fully satisfied about all aspects of the project, that the complainants took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question. At the time of application, the building plans of the project had not yet been approved by the competent authority and this fact was clearly and transparently disclosed to the complainants

at the time of booking itself and clearly mentioned in the application form. The complainants were conscious and aware that the construction would commence only after approval of building plans and as such were fully conscious and aware that time was not the essence of the contract when it came to delivery of possession.

iv. That unit bearing no. EEA-H-F07-02 was provisionally allotted to the original allottees having tentative super area of 1020 sq. ft. vide provisional allotment letter dated 24.09.2009 issued in favour of the original allottees. The buyer's agreement was executed between the original allottees, and the respondent on 09.01.2010. The buyer's agreement was willingly and voluntarily executed by the original allottees without raising any objection and the terms and conditions of the buyer's agreement were duly accepted by the original allottees and the same are binding upon the original allottees and the complainants with full force and effect.

v. That the original allottees had opted for a construction linked payment plan and had agreed and undertaken to make payment in accordance therewith. However, the original allottees consciously defaulted in payments on several occasions. Consequently, the respondent was constrained to issue notices and reminders for payment to the original allottees.

vi. That the original allottees entered into an agreement with the complainants for sale of the unit in question. That at the time of

purchasing the unit in question in resale from the original allottees, the complainants were fully conscious and aware of the status of construction and that the so-called due date of possession as per the buyer's agreement had already passed. The complainants also had the full opportunity to study and understand the terms and conditions of the already executed buyer's agreement dated 09.01.2009 and fully understood and accepted implications and consequences thereof. The complainants were fully aware that their predecessors in interest, being defaulters, would not be entitled to any compensation for delay in possession under clause 13(c) of the buyer's agreement and consequently, the complainants also would not be entitled to any compensation for delay. Nevertheless, out of abundant caution, the complainants executed affidavit and indemnity cum undertaking admitting and acknowledging that the complainants shall not be entitled to claim any interest on delayed possession. Based on the transfer documents executed by the complainants and upon the complainants undertaking to be bound by the buyer's agreement dated 09.01.2009, the allotment of the unit was transferred in favour of the complainants vide nomination letter dated 31.12.2019.

vii. That the delay, if any, in the project has got delayed on account of the following reasons which were/are beyond the power and control of the respondent and hence the respondent cannot be held

responsible for the same. *Firstly*, the National Building Code was revised in the year 2016 and in terms of the same, all high-rise buildings (i.e. buildings having area of less than 500 sq. mtrs. and above), irrespective of area of each floor, are now required to have two staircases. In view of the practical difficulties in constructing a second staircase in a building that already stands constructed according to duly approved plans, the respondent made several representations to various Government Authorities requesting that the requirement of a second staircase in such cases be dispensed with. Eventually, the respondent took the decision to go ahead and construct the second staircase. It is stated that the construction of the second staircase has already been completed and OC has already been applied on 20.07.2020. Thereafter, the occupation certificate has been granted on 11.11.2020. *Secondly*, the defaults on the part of the contractor M/s B L Kashyap and Sons (BLK/Contractor). The progress of work at the project site was extremely slow on account of various defaults on the part of the contractor, such as failure to deploy adequate manpower, shortage of materials etc. In this regard, the respondent made several requests to the contractor to expedite progress of the work at the project site. However, the contractor did not adhere to the said requests and the work at the site came to a standstill. The arbitration proceedings titled as B L Kashyap and Sons Vs Emaar MGF Land Ltd (arbitration case number 1 of 2018)

before Justice A P Shah (Retd), Sole Arbitrator have been initiated. Hon'ble arbitrator vide order dated 27.04.2019 gave liberty to the respondent to appoint another contractor w.e.f. 15.05.2019. It is evident from the aforesaid, that the respondent had been diligently pursuing the matter before the Sole Arbitrator and no fault can be attributed to the respondent in this regard. A force majeure situation that had arisen on account of which the respondent was unable to fulfill its obligations till the situation persisted.

viii. That the respondent completed construction of the apartment/building and applied for the issuance of the occupation certificate on 20.07.2020. The occupation certificate has been issued by the competent authority on 11.11.2020. The grant of occupation certificate is prerogative of the concerned statutory authority, and the respondent does not exercise any control or influence over the same. Therefore, time period utilized by the concerned statutory authority in granting the occupation certificate to the respondent is necessarily required to be excluded from computation of time period utilized for implementation of the project.

ix. That the complainants were offered possession of the unit in question through letter of offer of possession dated 21.11.2020. The complainants were called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit in

question to them. The complainants took possession of the unit on 15.12.2020 after admitting and acknowledging that the complainants were fully satisfied with the unit in all respects and did not have any claim of any nature against the respondent. An indemnity cum undertaking upon possession was executed by the complainant as well as the unit hand over letter dated 15.12.2020. Thereafter, the conveyance deed bearing vasika no. 7288 dated 14.10.2021 has also been registered in favour of the complainants. Thus, the transaction between the complainants and the respondent stands fully concluded.

x. That the alleged interest frivolously and falsely sought by the complainants was to be construed for the alleged delay in delivery of possession. It is pertinent to note that an offer for possession marks termination of the period of delay, if any. The complainants are not entitled to contend that the alleged period of delay continued even after receipt of offer for possession. The complainants have intentionally distorted the real and true facts in order to generate an impression that the respondent has reneged from its commitments. No cause of action has arisen or subsists in favour of the complainants to institute or prosecute the instant complaint.

xi. That after the execution of the unit handover letter dated 15.12.2020, obtaining of possession of the unit in question, and registration of the conveyance deed in their favour, the

complainants are left with no right, entitlement or claim against the respondent. The transaction between the complainants and the respondent stands concluded and no right or liability can be asserted by the respondent or the complainants against the other. The instant complaint is a gross misuse of process of law.

xii. That there is no default or lapse on the part of the respondent. The respondent has duly fulfilled its obligations under the buyer's agreement by completing construction and offering possession in accordance with the buyer's agreement, within the period of validity of registration of the project under the Act. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. There is no merit in the allegations raised by the complainants.

xiii. That several allottees, including the complainants have defaulted in timely remittance of payment of installments which was an essential, crucial and an indispensable requirement for 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 in no equity in favour of the complainants. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. 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 complainants at a later stage.

F. Findings on the objections raised by the respondent

F.I Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act

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 handing over possession as per declaration given under section 4(2)(l)(C) of the Act

16. The counsel for the respondent has stated that respondent has duly fulfilled its obligations under the buyer's agreement by completing construction and offering possession in accordance with the buyer's

agreement, within the period of validity of registration of the project under the Act. Hence, no illegality can be attributed to the respondent.

17. Therefore, next question of determination is whether the respondent is entitled to avail the time given to him by the authority at the time of registering the project under section 3 & 4 of the Act. It is now settled law that the provisions of the Act and the rules are also applicable to ongoing project and the term ongoing project has been defined in rule 2(1)(o) of the rules. The new as well as the ongoing project are required to be registered under section 3 and section 4 of the Act.

18. Section 4(2)(l)(C) of the Act requires that while applying for registration of the real estate project, the promoter has to file a declaration under section 4(2)(l)(C) of the Act and the same is reproduced as under: -

> *Section 4: - Application for registration of real estate projects*
>
> *(2)The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely: —.....*
>
> *(l): -a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating: — .....*
>
> *(C) the time period within which he undertakes to complete the project or phase thereof, as the case may be...."*

19. The time period for handing over the possession is committed by the builder as per the relevant clause of apartment buyer agreement and the commitment of the promoter regarding handing over of possession of the unit is taken accordingly. The new timeline indicated in respect of ongoing project by the promoter while making an application for registration of the project does not change the commitment of the

promoter to hand over the possession by the due date as per the apartment buyer agreement. The new timeline as indicated by the promoter in the declaration under section 4(2)(l)(C) is now the new timeline as indicated by him for the completion of the project. Although, penal proceedings shall not be initiated against the builder for not meeting the committed due date of possession but now, if the promoter fails to complete the project in declared timeline, then he is liable for penal proceedings. The due date of possession as per the agreement remains unchanged and promoter is liable for the consequences and obligations arising out of failure in handing over possession by the due date as committed by him in the apartment buyer agreement and he is liable for the delayed possession charges as provided in proviso to section 18(1) of the Act. The same issue has been dealt by hon'ble Bombay High Court in case titled as ***Neelkamal Realtors Suburban Pvt. Ltd. and anr. vs Union of India and ors***. and has observed 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..."*

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

20. It is pleaded on behalf of respondent that complainants are not "allottees" but investors who have booked the apartment in question as a speculative investment in order to earn rental income/profit from its

resale. The authority observes that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that the preamble is an introduction of a statute and states the main aims and objects of enacting a statute but at the same time, the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement, it is revealed that the complainants are buyers and have paid a considerable amount towards purchase of subject unit. At this stage, it is important to stress upon the definition of the term allottee under the Act, and the same is reproduced below for ready reference:

> *"2(d) 'allottee' in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold(whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent."*

21. In view of above-mentioned definition of allottee as well as the terms and conditions of the buyer's agreement executed between the parties, it is crystal clear that the complainants are allottees as the subject unit allotted to them by the respondent/promoter. The concept of investor is not defined or referred in the Act of 2016. As per definition under section 2 of the Act, there will be 'promoter' and 'allottee' and there cannot be a

party having a status of 'investor'. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal No.0006000000010557 titled as **M/s Srushti Sangam Developers Pvt Ltd. Vs Sarvapriya Leasing (P) Ltd. and anr.** has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottees being an investor are not entitled to protection of this Act also stands rejected.

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

22. 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 21.07.2020 and thereafter vide memo no. ZP-441-Vol.-II/AD(RA)/2020/20094 dated 11.11.2020, 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 11.11.2020 that an incomplete application for grant of OC was applied on 21.07.2020 as fire NOC from the competent authority was granted only on 25.09.2020 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 22.09.2020 and

24.09.2020. The District Town Planner, Gurugram and Senior Town Planner, Gurugram has submitted requisite reports' about this project on 21.09.2020 and 23.09.2020 respectively. As such, the application submitted on 21.07.2020 was incomplete and an incomplete application is no application in the eyes of law.

23. 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 25.09.2020 and consequently the concerned authority has granted occupation certificate on 11.11.2020. Therefore, in view of the deficiency in the said application dated 21.07.2020 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.

24. The respondent contended that at the time of taking possession of the subject unit vide unit hand over letter dated 15.12.2020, the complainants have certified themselves to be fully satisfied with regard

to the measurements, location, direction, developments et cetera of the unit and also admitted and acknowledge that they 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."*

25. 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.

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

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

27. The respondent submitted that the complainants had executed the conveyance deed on 14.10.2021 and therefore, the transaction between the complainants and the respondent has been concluded and no right or liability can be asserted by respondent or the complainants against the other. Therefore, the complainants are estopped from claiming any interest in the facts and circumstances of the case. The present complaint is nothing but a gross misuse of process of law.

28. In the complaint bearing no. ***4031 of 2019*** titled as ***Varun Gupta V/s Emaar MGF Land Ltd.,*** the authority has comprehensively dealt with this issue and has held that taking over the possession and thereafter execution of the conveyance deed can best be termed as respondent having discharged its liabilities as per the buyer's agreement and upon taking possession, and/or executing conveyance deed, the complainants never gave up their statutory right to seek delayed possession charges as per the provisions of the said Act. 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."

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

G. Findings on the reliefs sought by the complainants

G.I Delay possession charges

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

31. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

> *"**Section 18: - Return of amount and compensation***
>
> *18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*
>
> .....
>
> *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

32. 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."

33. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainants not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment time period for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject floor and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

34. **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 27.04.2022. 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.

35. **Entitlement of delay possession charges to the complainants 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)-**

36. 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 complainants were endorsed as allottees in the above project (as subsequent allottees) on 31.12.2019. The occupation certificate of the project was received on 11.11.2020. The counsel for the complainants 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.

37. The counsel for the respondent states that the claim of the complainants arises from the date the complainants were endorsed as allottees i.e., 31.12.2019. 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.

38. 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 the subsequent allottee has stepped into the shoes of the original allottee after coming into force of the Act and after the registration of the project in question, the delayed possession charges shall be granted w.e.f. due date of handing over possession as per the builder buyer's agreement as the Act, by virtue of section 18, has created statutory right of delay possession charges in favour of the allottees.

39. The authority observes that in the present complaint, the subject unit has been endorsed in favour of the complainants vide nomination letter dated 31.12.2019 after the registration of the project in question. Therefore, in furtherance of ***Varun Gupta Vs. Emaar MGF Land Ltd. (supra),*** the complainants are entitled to delay possession charges w.e.f., the due date of possession i.e., 26.08.2013.

40. **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.*

41. 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.

42. 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%.

43. **Rate of interest to be paid by complainants/allottees for delay in making payments:** The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from

the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

> *"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
> *Explanation. —For the purpose of this clause—*
> *(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;"*

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

45. 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 09.01.2010, 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 as computed above. The complainants in the present complaint are subsequent allottees and had purchased the unit in question from the original allottees and thereafter, the respondent had acknowledged the same vide endorsement on the buyer's agreement on 31.12.2019. In terms of the order passed by the authority in complaint titled as ***Varun Gupta Versus Emaar MGF Land Ltd. (CR/4031/2019)***, the complainants are entitled to delay possession charges w.e.f. the due date of handing over the possession as per the terms of the buyer's agreement. In the present case, the complainants were offered possession by the respondent on 21.11.2020 after obtaining occupation certificate dated 11.11.2020 from the competent authority. 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 complainants as per the terms and conditions of the buyer's agreement dated 09.01.2010 executed between the parties.

46. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 11.11.2020. However, the respondent offered the possession of the unit in question to the

complainants only on 21.11.2020, so it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, they should be given 2 months' time from the date of offer of possession. These 2 months' of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 26.08.2013 till the expiry of 2 months from the date of offer of possession (21.11.2020) which comes out to be 21.01.2021.

47. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainants are entitled to delay possession charges at prescribed rate of the interest @ 10.70 % p.a. w.e.f. 26.08.2013 till 21.01.2021 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

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

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

- **Advance maintenance charges-**

49. The counsel for the complainants contended that the respondent asked for 12 months of advance maintenance charges amounting to Rs.42,840/- from the complainants which is absolutely illegal and against the laws of the land and having no option left, the complainants 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.

50. The authority is of the view that the respondent has demanded an amount of Rs. 42,820/- (@Rs.3.5 per sq. ft. + GST @ 18% for 12 months) towards advance maintenance charges vide letter of offer of possession dated 21.11.2020. The authority is of the view that the same has been charged as per clause 18 of the buyer's agreement. Therefore, the complainants are directed to pay the same.

- **Electricity connection charges and Electric meter charges**

51. The counsel for the complainants contended that the respondent is asking for electric meter charges of Rs. 9,103/- and electric connection charges of Rs. 28,766/- from the complainants 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.

52. 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."*

53. 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.

54. In view of the above, the complainants are directed to pay electric connection charges as well as electric meter charges.

- **Electrification charges**

55. 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.

56. 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.III Direct the respondent to return amount unreasonably charged by respondent by increasing sale price after execution of the buyer's agreement between respondent and complainants.

57. The authority observes that as per schedule of payment annexed with the buyer's agreement (annexure R4, page 92 of reply), the total sale consideration is Rs.37,98,120/- which is inclusive of basic sale price, EDC and IDC, club membership and car parking & excluding taxes. Whereas as per statement of account dated 27.04.2022 (annexure C6, page 100 of complaint), the sale consideration has been increased to Rs.38,65,695/- (excluding taxes) i.e. an increase of Rs.67,575/-. Accordingly, Rs.67,575/- have been charged extra.

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

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

59. The complainants are contending that they have been additionally burdened to give lien marked FD for HVAT amounting to Rs.10,684/- 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.

60. 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.

61. In the present complaint, the respondent has demanded Rs.10,684/- towards lien marked FD for HVAT liability post 01.04.2014 till 30.062017 vide letter of offer of possession dated 21.11.2020. 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 complainants along with a copy of this order.

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

62. The counsel for the complainants 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 complainants to entertain any apprehensions.

63. 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 complainants are directed to approach the competent authority in respect of the said relief. Also, the complainants are at liberty to approach the adjudicating officer for seeking compensation, if any, as per the provisions of the Act.

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

64. The complainants are 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 complainants.

65. The authority observes that the complainants 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/-."*

66. 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 complainants-allottee. Provided that if they opt out to avail this facility and later approaches the respondent for membership of the club, then they 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

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

i. The respondent is directed to pay the interest at the prescribed rate i.e. 10.70 % per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 26.08.2013 till 21.01.2021 i.e. expiry of 2 months from the date of offer of possession (21.11.2020). The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per rule 16(2) of the rules.

ii. **Increase in sale price after execution of buyer's agreement:** The respondent is directed to delete an amount of Rs.67,575/- from the total sale consideration and return the excess amount to the complainants.

iii. **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.

iv. **Lien marked FD on account of HVAT:** The respondent shall not demand Rs.10,684/- towards lien marked FD for HVAT liability post 01.04.2014 till 30.062017 vide letter of offer of possession dated 21.11.2020 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 complainants along with a copy of this order.

v. **Club membership charges-** The respondent shall refund the club membership charges if any request is received from the

complainants-allottee. Provided that if they opt out to avail this facility and later approaches the respondent for membership of the club, then they 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/-.

vi. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.

68. Complaint stands disposed of.

69. File be consigned to registry.

(Sanjeev Kumar Arora)
Member

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 28.03.2023