

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

**Complaint no.** : 6804 of 2022  
**Date of complaint** : 04.11.2022  
**Date of order** : 11.10.2023

M/s Dipanshu Promoter & Builder Private Limited  
(Through its managing director Sanjay Kumar Singh)  
Office At: - 2B, Vatika Apartment, Link Tank Road,  
Ranchi- 834001.

**Complainant**

Versus

M/s Raheja Developers Limited.  
**Regd. office:** W4D, 204/5, Keshav Kunj, Cariappa Marg,  
Western Avenue, Sainik Farms, New Delhi- 110062.

**Respondent**

**CORAM:**

Ashok Sangwan

**Member**

**APPEARANCE:**

Gaurav Rawat (Advocate)  
Garvit Gupta (Advocate)

Complainant  
Respondent

**ORDER**

1. This complaint has been filed by the complainant/allottee 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 under the provisions of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

2. The particulars of unit details, 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. N.	Particulars	Details
1.	Name of the project	"Raheja's Aranya City", Sectors 11&14, Sohna Gurugram
2.	Project area	107.85 acres
3.	Nature of the project	Residential plotted colony
4.	DTCP license no. and validity status	25 of 2012 dated 29.03.2012 valid up to 28.03.2018
5.	Name of licensee	Ajit Kumar and 22 Others
6.	RERA Registered/ not registered	Registered vide no. 93 of 2017 dated 28.08.2017
7.	RERA registration valid up to	27.08.2022
8.	Unit no.	Plot No. B-35 (Page no. 34 of the complaint)
9.	Unit area admeasuring	598.340 sq. yds. (Page no. 34 of the complaint)
10.	Allotment letter	Not annexed
11.	Date of execution of agreement to sell	15.01.2014 (Page no. 32 of the complaint)
12.	Possession clause	<p><b>4.2 Possession Time and Compensation</b></p> <p><i>That the Seller shall sincerely endeavor to give possession of the plot to the purchaser <b>within</b> thirty-six (36) months <b>from the date of the execution of the Agreement to sell</b> and after providing of necessary infrastructure specially road sewer &amp; water in the sector by the Government, but subject to force majeure conditions or any Government/Regulatory authority's action, inaction or omission and reasons beyond the control of the Seller. <b>However, the</b></i></p>



		<p><i>seller shall be entitled for compensation free grace period of six (6) months in case the development is not completed within the time period mentioned above. In the event of his failure to take over possession of the plot, provisionally and /or finally allotted within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be lie at his/her risk and cost the purchaser shall be liable to pay @ Rs.50/- per sq. Yds. of the plot area per month as cost and the purchaser shall be liable to pay @ Rs.50/- per sq. Yards. Of the plot area per month as holding charges for the entire period of such delay..... "</i></p> <p>(Page no. 40 of the complaint).</p>
13.	Grace period	<p><b>Allowed</b></p> <p>As per clause 4.2 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 months plus 6 months of grace period. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the part completion certificate by January 2017. As per agreement to sell, the construction and development work of the project is to be completed by January 2017 which is not completed till date. <b>Accordingly, in the present case the grace period of 6 months is allowed.</b></p>
14.	Due date of possession	<p><b>15.07.2017</b></p> <p><b>[Note: 36 months form the date of agreement to sell i.e., 15.01.2014 + six months grace period]</b></p>



15.	Basic sale consideration as per BBA at page no. 50 of complaint	Rs.2,22,33,871/-
16.	Total sale consideration as per customer ledger dated 19.08.2022 at page no. 63 of complaint	Rs.2,27,40,255/-
17.	Amount paid by the complainant as per customer ledger dated 19.08.2022 at page no. 63 of complaint	Rs.2,28,77,895/-
18.	Payment plan	Installment payment plan (Page no. 50 of the complaint).
19.	Occupation certificate /Completion certificate	Not received
20.	Offer of possession	Not Offered
22.	Delay in handing over the possession till date of this order i.e., 11.10.2023	6 years 02 months and 3 days

**B. Facts of the complaint**

3. The complainant has made the following submissions in the complaint: -

- I. That in the year 2012, the respondent company issued an advertisement announcing a residential plotted colony project called "Raheja Aranya City" in a land parcel admeasuring a total area of approximately on the 107.85 acres of land, under the license no. 25 of 2012 dated 29.03.2012, issued by DTCP, Haryana, Chandigarh, situated at Sector 11 & 14, Sohna, Gurugram, Haryana and thereby invited applications from prospective buyers for the purchase of unit in the said project.
- II. That relying on various representations and assurances given by the respondent company and on belief of such assurances, complainant booked a plot in the project by paying an amount of Rs.22,16,610/- on 06.09.2013 towards the booking of the said plot bearing no. B35, Block-B, type-II, in

Sector 11 & 14, having super area measuring 598.34 sq. yards to the respondent dated 12.09.2013 and the same was acknowledged by the respondent.

- III. That the respondent confirms the booking of the said unit to the complainant, asking to get submitted the relevant documents provided in the letter and the same was duly submitted by the complainant on time. Further, providing the details of the project, confirming the booking of the plot dated 12.09.2013, allotting a unit no. B35, Block-B, type-II, measuring 598.34 sq. yards in the aforesaid project of the developer for a total sale consideration of the unit i.e. Rs.2,22,33,871/-which includes basic price, car parking charges and development charges and other specifications of the allotted unit and providing the time frame within which the next instalments was to be paid.
- IV. That the buyer's agreement was executed between the parties on 15.01.2014. As per clause 4.2 of the buyer's agreement the respondent had to deliver the possession within a period of 36 months from the date of the execution of the agreement under with the grace period of 6 month. Hence the due date of possession is calculated from the date of agreement which comes out to be 15.01.2017. Therefore, the due date of possession comes out to be 15.01.2017.
- V. Further, the complainant having dream of its own plot in NCR signed the agreement in the hope that the unit will be delivered within 36 months from the date of agreement. The complainant was also handed over one detailed payment plan which was construction linked plan. It is unfortunate that the dream of owning a unit of the complainant was shattered due to dishonest, unethical attitude of the respondent.

- VI. That as per the demands raised by the respondent, based on the payment plan, the complainant to buy the captioned unit already paid a total sum of Rs.2,27,73,660/- towards the said unit against total sale consideration of Rs.2,22,33,871/-.
- 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 possession 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 the complainant contacted the respondent on several occasions and were regularly in touch with the respondent. The respondent was never able to give any satisfactory response to the complainant regarding the status of the possession and was never definite about the delivery of the possession. The complainant kept pursuing the matter with the representatives of the respondent by visiting their office regularly as well as raising the matter to when will they deliver the project and why possession is going on at such a slow pace, but to no avail. Some or the other reason was being given in terms of shortage of labour etc.
- IX. That the complainant has suffered a loss and damage in as much as they had deposited the money in the hope of getting the said unit. They have not only been deprived of the timely possession of the said unit but the prospective

return they could have got if they had invested in fixed deposit in bank. Therefore, the compensation in such cases would necessarily have to be higher than what is agreed in the BBA.

- X. That complainants requested to the respondent raising the concern with respect to prior inspection/visit of the unit, asking the respondents to pay the dues arising on the part of the respondents, further, to provide the copy of the CC, asking for the details of the TDS plus the details of the taxes paid by complainant, and the draft copy of the conveyance deed but respondent till date failed to reply to aforesaid concerns.
- XI. That complainant sent various communications to the respondents raising various issues in relation to the said unit and asking the reason for delay in handing over the possession of the plot and timeline within which possession will be handed over to the complainant and challenging the various illegal and one-sided demands letters sent to the complainant but respondent till date has failed to provide any satisfactory response to the complainant. The complainant after many requests and emails received the demand letter on account of offer of possession dated 11.05.2017 along with the above said demand letter containing several illegal demands.
- XII. That raising demand letter by the respondent on payment of charges which the plot buyer is not contractually bound to pay, cannot be considered to be a valid demand letter/offer of possession. It would be noticed from the details provided above that those charges were never payable by the complainant as per the agreement and hence the demand letter is not valid. Further, at the time of offer of possession respondent failed to obtain the CC of the said unit.
- XIII. That it has been held by the Honourable NCDRC, New Delhi in many cases that demand letter on the payment of charges which the buyer is not

contractually bound to pay, cannot be considered to be a valid offer of possession/demand letter. In the present case asking for charges as elaborated above, which the allottees are not contractually bound to pay is illegal and unjustified and therefore not a valid offer of possession/demand letter.

- XIV. That the respondent is guilty of deficiency in service within the purview of provisions of the Act, 2016 and the provisions of Rules, 2017. The complainant has suffered on account of deficiency in service by the respondents and as such the respondent is fully liable to cure the deficiency as per the provisions of the Act made thereunder.

**C. Relief sought by the complainant:**

4. The complainant has sought following relief(s).
- i. Direct the respondent to execute the sale deed and hand over the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of agreement of sell.
  - ii. Direct the respondent to pay the interest on the total amount paid by the complainant at the prescribed rate of interest as per the Act of 2016, from the date of payment of each installment till date of execution of sale deed and actual physical possession therefore being denied to the complainant by the respondent in spite of the fact that the complainant desires to take the possession.
  - iii. Direct the respondent to pay the balance amount due to the complainant from the respondent on account of the interest, as per the guidelines laid in the RERA, 2016, before execution of the Conveyance Deed/ sale deed.



- iv. To restrain the respondent from raising fresh demand for payment under any head, as the construction is abandoned at the project site and to set aside letter dated 11.05.2017.
  - v. Direct the respondent not to force the complainant to sign any Indemnity cum undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.
  - vi. Direct the respondent to execute the sale deed and handover the possession of the unit after completing in all aspect to the complainant and not to force to deliver an incomplete unit.
  - vii. Direct the respondents not to charge anything irrelevant which has not been agreed to between the parties like Labour Cess, electrification charges, maintenance charges etc., which in any case is not payable by the complainant.
  - viii. Direct the respondent to provide the exact lay out plan of the said unit and execute the conveyance deed and deliver the actual physical possession.
5. On the date of hearing, the authority explained to the respondent /promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent**

6. The respondent contested the complaint on the following grounds: -
- a) That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The agreement to sell was executed between both the parties prior to the enactment of the Act, 2016 and the provisions laid down in the said Act cannot be enforced retrospectively. Although the provisions of the Act, 2016 are not applicable to the facts of the present case in hand yet without prejudice and in order to avoid complications later on, the respondent has registered the project with the authority. The said



project is registered under the provision of the Act vide registration no. 93 of 2017 dated 28.08.2017.

- b) That the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute as clause 13.2 of the buyer's agreement.
- c) That the complainants have not approached this authority with clean hands and have intentionally suppressed and concealed the material facts in the present complaint. The present complaint has been filed by them maliciously with an ulterior motive and it is nothing but a sheer abuse of the process of law. The true and correct facts are as follows: -
- That the respondent is a reputed real estate company having immense goodwill, comprised of law abiding and peace-loving persons and has always believed in satisfaction of its customers. The respondent has developed and delivered several prestigious projects such as 'Raheja Atlantis', 'Raheja Atharva', 'Raheja Shilas' and 'Raheja Vedanta' and in most of these projects large number of families have already shifted after having taken possession and resident welfare associations have been formed which are taking care of the day to day needs of the allottees of the respective projects.
  - That the complainants, after checking the veracity of the project namely, 'Raheja's Aranya City, Sector 11 and 14, Sohna, Gurgaon had applied for allotment of a plot vide their Booking application form. The complainants agreed to be bound by the terms and conditions of the booking application form. The complainants were aware from the very inception that the plans as approved by the concerned authorities are tentative in



nature and that the respondent might have to effect suitable and necessary alterations in the layout plans as and when required.

- That based on the application for booking, the respondent vide its allotment offer letter to the complainants plot no. B-35. The complainant signed and executed the agreement to sell on 12.04.2014 and the complainants agreed to be bound by the terms contained therein.
- That the respondent raised payment demands from the complainants in accordance with the mutually agreed terms and conditions of allotment as well as of the payment plan and the complainants made the payment of the earnest money and part-amount of the total sale consideration and are bound to pay the remaining amount towards the total sale consideration of the plot along with applicable registration charges, stamp duty, service tax as well as other charges payable at the applicable stage.
- Despite the respondent fulfilling all its obligations as per the provisions laid down by law, the government agencies have failed miserably to provide essential basic infrastructure facilities such as roads, sewerage line, water, and electricity supply in the sector where the said project is being developed. The development of roads, sewerage, laying down of water and electricity supply lines has to be undertaken by the concerned governmental authorities and is not within the power and control of the respondent. The respondent cannot be held liable on account of non-performance by the concerned governmental authorities. The respondent company has even paid all the requisite amounts including the external development charges (EDC) to the concerned authorities. However, yet, necessary infrastructure facilities like 60-meter sector roads including 24-meter-wide road connectivity, water and sewage



which were supposed to be developed by HUDA parallelly have not been developed.

- That the time period for calculating the due date of possession shall start only when the necessary infrastructure facilities will be provided by the governmental authorities and the same was known to the complainants from the very inception. That non-availability of the infrastructure facilities is beyond the control of the respondent and the same also falls within the ambit of the definition of 'force majeure' condition as stipulated in Clause 4.4 of the agreement to sell.
- That development of the township in which the plot allotted to the complainants is located is 50% complete and the respondent shall hand over the possession of the same to the complainant after its completion subject to the complainants making the payment of the due installments amount and on availability of infrastructure facilities such as sector road and laying providing basic external infrastructure such as water, sewer, electricity etc. as per terms of the application and agreement to sell. The photographs showing the current status of the development of the plot in which the plot allotted to the complaint is located. Despite the occurrence of such force majeure events, the respondent has completed the development of the project and has already been granted part completion certificate on 11.11.2016. Under these circumstances passing any adverse order against the respondent at this stage would amount to complete travesty of justice.

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

**E. Jurisdiction of the authority**

8. The authority has complete territorial and 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 Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**Section 11**

.....

(4) 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 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. An objection raised the respondent 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 flat buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)** decided on 06.12.2017 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*

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*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."*

13. Also, in appeal no. 173 of 2019 titled **as Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

*"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."*

14. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the 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 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 any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.



**F. II Objection regarding agreements contains an arbitration clause which refers to the dispute resolution system mentioned in agreement.**

15. The agreement to sell entered into between the two side on 30.06.2014 contains a clause 13.2 relating to dispute resolution between the parties. The clause reads as under: -

*"All or any disputes arising out or touching upon in relation to the terms of this Application/Agreement to Sell/ Conveyance Deed including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled through arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/ modifications thereof for the time being in force. The arbitration proceedings shall be held at the office of the seller in New Delhi by a sole arbitrator who shall be appointed by mutual consent of the parties. If there is no consensus on appointment of the Arbitrator, the matter will be referred to the concerned court for the same. In case of any proceeding, reference etc. touching upon the arbitrator subject including any award, the territorial jurisdiction of the Courts shall be Gurgaon as well as of Punjab and Haryana High Court at Chandigarh".*

16. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in **National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506**, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. Therefore,

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by applying same analogy the presence of arbitration clause could not be construed to take away the jurisdiction of the authority.

17. Further, in **Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017**, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and builders could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

*"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short "the Real Estate Act"). Section 79 of the said Act reads as follows: -*

*"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."*

*It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellant Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra), the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act.*

...

*56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated kind of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section 8 of the Arbitration Act."*

18. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the builder buyer agreement, the hon'ble Supreme Court **in case titled as M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018**

*in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018* has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view. The relevant paras are of the judgement passed by the Supreme Court is reproduced below:

*"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."*

19. Therefore, in view of the above judgements and considering the provision of the Act, the authority is of the view that complainants are well within their rights to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

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

**G.I Direct the respondent to execute the sale deed and hand over the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of agreement of sell.**



G. II Direct the respondent to pay the interest on the total amount paid by the complainant at the prescribed rate of interest as per the Act of 2016, from the date of payment of each installment till date of execution of sale deed and actual physical possession therefore being denied to the complainant by the respondent in spite of the fact that the complainant desires to take the possession.

G.III Direct the respondent to pay the balance amount due to the complainant from the respondent on account of the interest, as per the guidelines laid in the RERA, 2016, before execution of the Conveyance Deed/ sale deed.

20. 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."*

21. Article 4.2 of the agreement to sell provides for handing over of possession and is reproduced below:

**4.2 Possession Time and Compensation**

*That the Seller shall sincerely endeavor to give possession of the Plot to the purchaser **within thirty-six (36) months** from the date of the execution of the Agreement to sell and after providing of necessary infrastructure specially road sewer & water in the sector by the Government, but subject to force majeure conditions or any Government/ Regulatory authority's action, inaction or omission and reasons beyond the control of the Seller. **However, the seller shall be entitled for compensation free grace period of +/- six (6) months in case the development is not completed within the time period mentioned above.***

*In the event of Purchaser's failure to take over possession of the Plot, provisionally ang/or finally allotted, within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be liable pay to @ Rs.50/- per sq. yd. of the Plot area per month as holding charges for th entire period of such delay. It is made clear to purchaser that the holding charges and the late construction charges are distinct and separate to be payable by the Purchaser to the seller. Further, if the seller fails to give possession of the said Plot within Thirty-Six (36) plus aforesaid grace period of six (6) from the date of execution of the Agreement To sell and after providing of necessary infrastructure in the sector by the government or for any reason other than the reason stated above, then the Seller shall be liable to pay*



*the Purchaser compensation @Rs.50/- per sq. yard of the plot area for the entire period of such delay....."*

22. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to providing necessary infrastructure specially road, sewer & water in the sector by the government, but subject to force majeure conditions or any government/regulatory authority's action, inaction or omission and reason beyond the control of the seller. 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 making payment as per the plan may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the agreement to sell by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of its 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.
23. **Admissibility of grace period:** As per clause 4.2 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 months plus 6 months of grace period. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the CC/part CC by January 2017. However, the fact cannot be ignored that there were circumstances beyond the control of the respondent which led to delay incompletion of the project. Accordingly, in the present case, the grace period of 6 months is allowed.

24. **Payment of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the prescribed rate of interest. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

***Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***

(1) *For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

25. The legislature in its wisdom in the subordinate legislation under the provision of 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.
26. Taking the case from another angle, the complainant/allottees were entitled to the delayed possession charges/interest only at the rate of Rs.7/- per sq. ft. per month as per relevant clauses of the buyer's agreement for the period of such delay; whereas the promoter was entitled to interest @18% per annum compounded at the time of every succeeding instalment for the delayed payments. The functions of the authority are to safeguard the interest of the aggrieved persons, may be the allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of his dominate position and to exploit the needs of the home buyers. The authority is duty bound to take into

consideration the legislative intent i.e., to protect the interest of the consumers/allottees in the real estate sector. The clauses of the buyer's agreement entered between the parties are one-sided, unfair and unreasonable with respect to the grant of interest for delayed possession. There are various other clauses in the buyer's agreement which give sweeping powers to the promoter to cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the buyer's agreement are ex-facie one-sided, unfair, and unreasonable, and the same shall constitute the unfair trade practice on the part of the promoter. These type of discriminatory terms and conditions of the buyer's agreement would not be final and binding.

27. 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., 11.10.2023 is **8.75%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.75%**.
28. The definition of term 'interest' as defined under section 2(z) 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:

*"(z) "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;"*

29. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., **10.75%** by the respondent/promoter which is the same as is being granted her in case of delayed possession charges.
30. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule 28(2), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 4.2 of the agreement executed between the parties on 15.01.2014, the possession of the subject apartment was to be delivered within 36 months from the date of agreement to sell which comes out to be 15.01.2017. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession was 15.07.2017. The respondent has failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainant as per the terms and conditions of the agreement to sell dated 15.01.2014 executed between the parties. It is pertinent to mention over here that even after a passage of more than 6 years neither the construction is complete nor an offer of possession of the allotted unit has been made to the allottee by the builder. Further, the authority observes that there is no document on record from which it can be ascertained as to whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.

31. 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 rate of the prescribed interest @10.75% p.a. w.e.f. 15.07.2017 till valid offer of possession plus 2 months after obtaining completion certificate/part completion certificate from the competent authority or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
32. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainant. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. However, there is nothing on the record to show that the respondent has applied for CC/part CC or what is the status of the development of the above-mentioned project. Hence, the respondent is directed to deliver the possession on payment of outstanding dues if any and to execute the sale deed in favour of the complainant on payment of stamp duty and registration charges within 60 days after obtaining CC/part CC from the competent authority.
- G. IV. To restrain the respondent from raising fresh demand for payment under any head, as the construction is abandoned at the project site and to set aside letter dated 11.05.2017.**
33. The complainant is seeking quashing of unreasonable demand made with the offer of possession dated 11.05.2017. The respondent vide its reply dated 14.03.2023 admitted the fact that the development of township in which the plot allotted to the complainant is located is 50% complete and shall hand over possession of the same to the complainant after its completion subject to the complainant making the payment of due instalment amount and on availability



of infrastructure facilities such as sector road and laying providing basic external infrastructure. Further, there is nothing on the record to show that the respondent has applied for CC/part CC. Therefore, the said demand under the head of offer of possession before obtaining CC/part CC from the competent authority cannot be held valid in the eyes of law. Thus, the respondent is directed to not to charge anything from the complainant which is not the part of the buyer's agreement.

**G.V. Direct the respondent not to force the complainant to sign any Indemnity cum undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.**

34. The respondent is directed not to place any condition or ask the complainant to sign an indemnity of any nature whatsoever, which is prejudicial to its rights as has been decided by the authority in complaint bearing no. **4031 of 2019 titled as Varun Gupta V. Emaar MGF Land Ltd.**

**G.VI Direct the respondent to not to charge anything irrelevant which has not been agreed to between the parties like Labour Cess, electrification Charges, maintenance charges etc., which in any case is not payable by the Complainant.**

**Labour Cess:** - This issue has already been dealt with by the authority in complaint titled as **Mr. Sumit Kumar Gupta and Anr. Vs. Sepset Properties Private Limited (962 of 2019)** decided on 12.03.2020, where it was held that since labour cess is to be paid by the respondent, as such no labour cess should be charged by it. Thus, the respondent is directed to withdraw the unjustified demand of the pretext of labour cess. The builder is supposed to pay a cess from the welfare of the labour employed at the site of construction and which goes to welfare boards to undertake social security schemes and welfare measures for building and other construction workers. So, the respondent is not liable to charge the labour cess.

**Electrification Charges:** - The promoter would be entitled to recover the actual charges paid to the concerned departments from the complainant /allottee on pro-rata basis on account of electricity connection, sewerage connection and water connection, etc., i.e., depending upon the area of the flat allotted to the complainant vis-à-vis the area of all the flats in this particular project. The complainant would also be entitled to proof of such payments to the concerned departments along with a computation proportionate to the allotted unit, before making payments under the aforesaid heads. The respondent is directed to provide specific details with regards to these charges.

**Maintenance charges:** - This issue has already been dealt by the authority in complaint bearing no. **CR/4031/2019 titled as Varun Gupta Vs. Emaar MGF Land Limited wherein** it is held that the respondent is right in demanding advance maintenance charges at the rates' prescribed in the builder buyer's agreement at the time of offer of possession. However, the respondent shall not demand the advance maintenance charges for more than one year from the allottees even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.

**G. VII. Direct the respondent to provide the exact lay out plan of the said unit.**

35. As per section 19(1) of Act of 2016, the allottees shall be entitled to obtain information relating to sanctioned plans, layout plans along with specifications approved by the competent authority or any such information provided in this Act or the rules and regulations or any such information relating to the agreement for sale executed between the parties. Therefore, the respondent/promoter is directed to provide details of license and statutory approvals to the complainant within a period of 30 days.

**H. Directions of the authority**

36. 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):

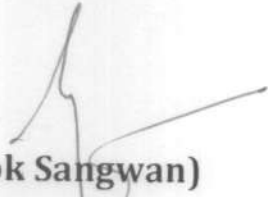
- I. The respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate of 10.75% p.a. for every month of delay from the due date of possession i.e., 15.07.2017 till valid offer of possession plus 2 months after obtaining completion certificate/part completion certificate from the competent authority or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules;
- II. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement;
- III. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period;
- IV. The respondent is directed to offer the possession of the allotted unit within 30 days after obtaining occupation certificate from the competent authority. The complainant w.r.t. obligation conferred upon it under section 19(10) of Act of 2016, shall take the physical possession of the subject unit, within a period of two months of the CC/part CC;
- V. The arrears of such interest accrued from 30.12.2017 till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules;

✓



- VI. The respondent is directed to get the conveyance deed of the allotted unit executed in the favour of complainant in term of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable within 60 days after obtaining CC/part CC from the competent authority.
- VII. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.75% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
37. Complaint stands disposed of.
38. File be consigned to registry.

Dated: 11.10.2023

  
**(Ashok Sangwan)**  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram