

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

Complaint no.	:	4575 of 2021
First date of hearing:		28.01.2022
Date of decision:		08.09.2023

Sidharth Kataria R/o 1609 B, Beverly Park 2, DLF City 2, MG Road, Gurugram, Haryana-122002	Complainant
Versus	
M/s Experion Developers Pvt. Ltd. Office address: F-9, 1 st floor, Manish Plaza-I, Plot no. 7, MLU, Sector 10, Dwarka, New Delhi-110075.	Respondent

CORAM:

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Mr. Jagdeep Kumar (Advocate)

Complainant

Mr. Dhruv Kapoor (Advocate)

Respondent

ORDER

1. The present complaint dated 25.05.2022 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 as provided under the provision of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Project and unit related details

2. The particulars of the project, the amount of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	Wind chants, Sector-112, Gurugram
2.	Nature of the project	Group housing colony
3.	DTCP License no.	i.) 21 of 2008 dated 08.02.2008. Valid up to - 07.02.2020 ii.) 28 of 2012 dated 07.04.2012. Valid up to - 06.04.2025
4.	RERA registered/ not registered	i.) 64 of 2017 dated 18.08.2017. Valid up to 17.08.2018 ii.) 73 of 2017 dated 21.08.2017. Valid up to 20.08.2019 iii.) 112 of 2017 dated 28.08.2017. Valid up to 27.08.2019
5.	Unit no.	1701, 17 th floor, tower WT-05 [pg. 28 of complaint]
6.	Unit area admeasuring	3525 sq. ft. (Super area) [pg. 28 of complaint]



7.	Increased unit area	3647 sq. ft. [As per letter dated 27.04.2017 on page no. 98 of reply]
8.	Increase in area of the unit (in %)	3.46% (122 sq. ft.)
9.	Allotment letter with original allottees	31.07.2012 [pg. 28 of complaint]
10.	Date of apartment buyer agreement with original allottees	26.12.2012 [pg. 33 of complaint]
11.	Agreement to sell between original allottee and complainant	08.09.2014 [pg. 73 of complaint]
12.	Endorsement in favour of complainant	16.09.2014 [pg. 71 of complaint]
13.	Possession clause	10 Project completion period 10.1 Subject to force majeure, timely payment of the total sale consideration and other provisions of this agreement, based upon the company's estimates as per present project plans, the company intends to hand over possession of the apartment within a period of 42 (forty two) months from the date of approval of the building plans or the date of receipt of the approval of the ministry of environment and forests, government of India for the project or execution of this agreement, whichever is later ("commitment period") . The buyer further agrees that the company shall additionally be entitled to a time period of 180 (one hundred and



		<i>eighty) days ("grace period") after expiry of the commitment period for unforeseen and unplanned project realities. However, in case of any default under this agreement that is not rectified or remedied by the buyer within the period as may be stipulated, the company shall not be bound by such commitment period.</i>
14.	Date of environment clearance	27.12.2012 [pg. 107 of reply]
15.	Due date of possession	27.06.2015 [Calculated from the date of environmental clearances, i.e., 27.12.2012 since the date of building plan is not known] Note: Grace period of 180 days is not allowed.
16.	Total sale consideration	₹ 2,43,27,259/- [As per statement of account dated 16.09.2021 on page no. 79 of complaint]
17.	Amount paid by the complainant	₹ 2,44,34,518/- [As per statement of account dated 16.09.2021 on page no. 79 of complaint]
18.	Occupation certificate	24.12.2018 (pg. 106 of reply)
19.	Offer of possession after receiving OC	27.12.2018 (pg. 109 of reply)
20.	Conveyance deed	22.05.2019 (pg. 136 of reply)
21.	Possession letter	22.05.2019



B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
- a. That Capt. Baldev Singh S/o Late Sh. Harendra Pal Singh and Mr. Veer Singh Yadav S/o Mr. S R S Yadav , R/o A35/23, DLF City, Phase 1, Gurgaon 122002 was the original allottee, who paid advance booking amount of ₹ 11,00,000/- through RTGS no. CORPH12181000353 dated 29.06.2012 to book the flat no. WT-05/1701, 17th Floor, Windchants , Sector 112, Gurgaon, Haryana, having super built up area admeasuring 3525 sq ft. in the project.
 - b. That the original allottee and respondent entered into a builder buyer's agreement on 26.12.2012 and subsequently the same was endorsed in favor of the complainant on 16.09.2014. That the complainant purchased the said flat in the project from original allottee vide "agreement to sell" dated 08.09.2014 and endorsement on the buyer's agreement was subsequently made on 16.09.2014, thus stepping into the shoes of the original allottee.
 - c. That the said unit was offered to the original allottee for a total sale consideration exclusive of taxes is ₹ 2,20,77,275/- hereinafter referred to as "sale consideration". The complainant made payment of the amount to the original allottee as paid by him to the respondent and the rest of the amount was paid to the respondent as and when demanded.
 - d. That on 16.09.2014 the respondent issued a letter in which respondent confirms that the endorsement formalities having completed and accordingly now the captioned property stands in the name of



complainant and respondent also confirm having received a total sum of ₹ 39,16,523/- which is in line with "agreement to sell" executed between complainant and original allottee. Respondent handover payment receipts, provisional allotment letter dated 31.07.2012 and "buyer's agreement" dated 26.12.2012 along with letter to complainant. Complainant found buyer's agreement consisting very stringent and biased contractual terms which are illegal, arbitrary, unilateral and discriminatory in nature, because every clause of agreement is drafting in a one-sided way and a single breach of unilateral terms of provisional allotment letter by complainant, will cost him forfeiting of 15% of total consideration value of unit. When complainant opposed the unfair trade practices of respondent about the delay payment charges of 18%, they said this is standard rule of company and company will also compensate at the rate of ₹ 7.5 per sq ft per month in case of delay in possession of flat by company. Complainant opposed these illegal, arbitrary, unilateral and discriminatory terms of buyer's agreement but as there is no other option left with complainant because if complainant stop the further payment of installments, then in that case respondent forfeit 15% of total consideration value from the total amount paid by complainant.

- e. That as per schedule -V of buyer's agreement the sales consideration exclusive of service tax is ₹ 2,20,77,275/- (which includes the charges towards basic price-₹ 1,93,87,500/-, two exclusive/dedicated covered car parking-₹8,00,000/-, EDC-₹11,45,624/-, IDC-₹91,652/-, community building furnishing-₹2,00,000/-, community building



security-₹1,00,000/-, and IFMS-₹3,52,500/-) but later at the time of possession respondent informed complainant that super area of flat is increased by 122 sq ft and respondent charged ₹ 6,71,000/- for increased area and respondent also add ₹ 7,24,899/- on account of "other charges" in sale consideration and increase sale consideration to ₹ 2,31,48,319/- without any reason for the same, which is a unilateral and unfair trade practice. Complainant opposed the increase in sales consideration at time of possession, but respondent did not pay any attention to complainant.

- f. That the complainant has paid the entire sale consideration along with applicable taxes to the respondent for the said flat. As per the statement dated 16.09.2021, issued by the respondent, upon the request of the complainant, the complainant have already paid ₹ 2,38,50,997/- towards total sale consideration plus taxes as on today to the respondent and now nothing is pending to be paid on the part of complainant. Although the respondent charges ₹ 7,24,899/- extra from complainant on sales price without stating any reason for the same.
- g. That on the date agreed for the delivery of possession of said unit as per date of booking and later on according to the flat buyer's agreement, the complainant had approached the respondent and its officers for inquiring the status of delivery of possession, but none had bothered to provide any satisfactory answer to the complainant about the completion and delivery said flat. The complainant thereafter kept running from pillar to post asking for the delivery of his home but could not succeed in getting any reliable answer.



- h. That the offer of possession offered by respondent through "notice of possession" was not a valid offer of possession because respondent offered the possession on dated 27.12.2018 with stringent condition to pay certain amounts which are never be a part of agreement, respondent ask for an amount of ₹ 7,24,899/- on account of other charges which is not a part of buyers agreement and respondent also informed to complainant that an extra amount of ₹ 6,71,000/- needs to be paid by complainant for increase in super area of flat, respondent increase the super area to 3647 sq ft. At the time of offer of possession builder adjusted the delay penalty @ ₹ 7.5/- sq ft per month. In case of delay payment, builder charged the penalty @18% per annum and in delay in possession give the ₹ 7.5/- sq ft only, which is illegal, arbitrary, unilateral and discriminatory and above all respondent does not allow complainant to visit the property at "Windchants" before clearing the final demand raised by respondent along with the offer of possession. Respondent demanded ₹ 7,24,899/- for "other charges", which was never agreed under the buyer's agreement, which is also an unfair trade practice. Complainant opposed the unjustified demands of respondent and informed respondent about his unfair calculation of delay possession penalty, but respondent does not want to answer any enquiry before getting complete payment against his final demand. Respondent left no other option to complainant, but to pay the payment for increased super area of said unit ₹ 6,71,000/- and ₹ 7,24,899/- on account of other charges and ₹ 14,82,100/- towards e-stamp duty and registration charges and ₹ 2,99,521/- towards maintenance charges of



above said unit no. WT-05/1701, tower 05, Windchant, Sector 112, Gurgaon., in addition to final demand raised by respondent towards the balance consideration value along with the notice of possession. Respondent handed over the physical possession of said flat on 22.05.2019 after receiving all payments on 15.01.2019 from complainant.

C. Relief sought by the complainant: -

4. The complainant has sought following relief(s):
 - a. Direct the respondent to pay an amount to be calculated @18% p.a. for the delay in handing over of possession from the due date of possession till date of delivery of possession.
 - b. Direct the respondent to return ₹ 7,24,899/- unreasonably charged by the respondent by increasing sale price after execution of BBA.
 - c. Cost of litigation- ₹ 55,000/-.
5. On the date of hearing, the authority explained to the respondent/ promoters about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent by way of written reply made the following submissions:
 - a. That Capt. Baldev Singh (HUF) along with Mr. Veer Singh Yadav, vide application dated 20.06.2012, applied for allotment of a residential unit in the said project. That, thereafter, based upon representations in the said application, the respondent, vide an



allotment letter dated 31.07.2012 provisionally allotted a residential unit, admeasuring 3525 sq. ft., bearing no. WT - 05/1701 in the said project to Capt. Baldev Singh (HUF) and Mr. Veer Singh Yadav.

- b. That the respondent also provided details of cost of the said unit along with its payment schedule, and further Capt. Baldev Singh (HUF) along with Mr. Veer Singh Yadav opted for the construction linked plan for making the payment. That the said allotment to Capt. Baldev Singh and Mr. Veer Singh Yadav was subject to terms of the allotment letter dated 31.07.2012 and the application form dated 20.06.2012. That as per the payment schedule, Capt. Baldev Singh and Mr. Veer Singh Yadav paid ₹ 11,00,000/- and ₹ 10,98,523/- to the respondent at the time of booking etc.
- c. That in terms of the said agreement, Capt. Baldev Singh (HUF) along with Mr. Veer Singh Yadav agreed to purchase the said unit for total sale consideration of ₹ 2,27,45,482/-, which was including basic sale price (BSP) of ₹ 1,99,86,575/-, car parking usage charges (CPUC) of ₹ 8,24,720/-, external development charges (EDC) of ₹ 11,81,024/-, infrastructure development charges (IDC) of ₹ 94,484/-, community building furnishing charges (CBFC) of ₹ 2,06,180/-, community building security deposit (CBSD) of ₹ 1,00,000/- and interest free maintenance security deposit (IFMSD) of ₹ 3,52,500/-. Pertinent to mention that taxes, cess, duties, VAT and service tax and other charges were not included in the said sale consideration, and the same were agreed to be paid by



- Capt. Baldev Singh (HUF) along with Mr. Veer Singh Yadav upon their demands by the respondent and/or the competent authority.
- d. It was further agreed that the respondent would hand over possession of the said unit to Capt. Baldev Singh (HUF) along with Mr. Veer Singh Yadav within 42 months and grace period of 180 days from the date of approval of building plans or approval from the ministry of environment and forests, or execution of this agreement, whichever was later.
- e. That Capt. Baldev Singh (HUF) along with Mr. Veer Singh Yadav miserably failed to pay the instalments as per the terms of the buyer agreement, and the respondent was constrained to issue final notice dated 28.08.2014 to Capt. Baldev Singh (HUF) along with Mr. Veer Singh Yadav for making payment of demand of ₹ 17,28,174/- with delayed interest of ₹ 37,499/- before issuing the termination notice as per the buyer agreement.
- f. That Capt. Baldev Singh (HUF) along with Mr. Veer Singh Yadav were not able to make payment of due instalment and in the month of September, 2014, Capt. Baldev Singh (HUF) along with Mr. Veer Singh Yadav transferred the said unit to the complainant herein, and admittedly, the complainant herein executed various documents including an undertaking-cum-indemnity dated 08.09.2014, whereby acknowledging that the complainant had read and understood the terms of the allotment letter and the buyer agreement, and agreed to comply the same. That based upon various documents, submitted by the complainant and Capt. Baldev

Singh (HUF) along with Mr. Veer Singh Yadav, the respondent transferred the said unit in favour of the complainant vide its letter dated 16.09.2014. That the complainant also made payment of the due instalment to the respondent.

- g. That the respondent, vide its letter dated 01.06.2015, informed the complainant that external development charges [EDC] stood revised downwards to ₹ 224.00 per sq. ft., and the amount due against the same would be credited to the complainant's account. That the respondent, vide its letter dated 04.06.2015, informed the complainant that the respondent, after feedback from the customers and the recommendations of the design and architect team, would be installing geysers and provision for piped gas, and as the same were not part of standard specifications, the respondent charged an amount of ₹ 52,001/- towards geysers and ₹ 46,181/- towards the gas pipeline from the complainant payable at the time of issuance of the notice of possession.
- h. That the respondent, vide its letter dated 27.04.2017, informed the complainant that the area of the said unit had been increased by 122 sq. ft. and hence the revised sale area of the said unit was 3647 sq. ft. That in terms of the buyer agreement, the complainant would pay the sale consideration on the final sale area.
- i. That the respondent, vide its letter dated 22.06.2017, informed the complainant that as per provisions of Haryana value added tax, 2003, the advances, received against the purchase of the said unit was liable for value added tax, however due to uncertainty around

the levy of the VAT, the respondent did not charge VAT from the complainant. It was further informed to the complainant that Government of Haryana introduced amnesty scheme for the contractors, whereby the liability of VAT was reduced to 1.05%, and hence the respondent paid an amount of ₹ 39,891/- to the concerned Authority towards discharge of VAT liability of the complainant. That, hence, the respondent demanded the said amount from the complainant being payable by the complainant as per the terms of the buyer agreement, and the complainant duly paid the said amount to the respondent on 28.06.2017 without any protest/reservation.

- j. That the respondent, vide its letter dated 22.07.2017, informed the complainant about levying of GST on the project w.e.f. 01.07.2017. That the occupancy certificate qua the relevant phase of the said project, in which the said unit is situated, has been granted by the concerned Authority vide its letter dated 24.12.2018, and thereafter the respondent started offering the possession of the units in the said project to the customers.
- k. That the respondent, vide its letter dated 27.12.2018, informed the complainant that the occupation certificate qua the said unit had been received by the respondent, and hence the respondent offered the possession of the said unit to the complainant. That the respondent also provided final statement of account and demanded ₹ 19,55,129/- towards total sale consideration, ₹ 2,99,521/- towards maintenance charges, payable to "Mainage Facility

Management Private Limited”, ₹ 14,74,100/- towards stamp duty, and ₹ 8,000/- towards registration charges and legal fees, payable to Shri Nihal Singh Dhariwal, from the complainant, and requested the complainant to make the payment of the said amounts and complete documentation on or before 28.01.2019. The respondent also raised the final demand of amounts due towards the said unit as per the terms of the buyer’s agreement i.e., a total amount of ₹ 19,78,135/-, after adjustment of previous dues/advances, payable towards dual meter charges, piped connection charges, geyser charges, PHE charges, FTTH charges, solar power charges, ECC charges, community building furnishing charges, interest free maintenance security deposit and balance sale consideration as per the payment plan opted by the complainant. That the respondent also gave credit of ₹ 5,83,520/- towards compensation for delay in terms of the buyer agreement.

- l. That the respondent, vide its letter dated 01.05.2019, informed the complainant about the credit of GST benefit under anti-profiteering under Section 171 of CGST Act and accordingly, the respondent gave input tax credit of ₹ 57,015/- to the complainant qua the said unit.
- m. That the complainant paid the demanded amount to the respondent without any force, pressure, coercion and any kind of objection. That thereafter, the respondent executed a conveyance deed dated 22.05.2019, whereby the respondent conveyed the said unit in favour of the complainant and also handed over the possession of

the said unit to the complainant. That the complainant also executed deed of apartment dated 22.05.2019 and possession letter dated 22.05.2019.

7. All other averments made in the complaint were denied in toto.
8. Copies of all relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submissions made by parties.

E. Jurisdiction of the authority

9. The plea of the respondents regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

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

E. II Subject matter jurisdiction

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



Section 11(4)(a)

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

Section 34-Functions of the Authority:

.....

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

12. So, in view of the provisions of the act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the relief sought by the complainant.

F. I Direct the respondent to pay an amount to be calculated @18% p.a. for the delay in handing over of possession from the due date of possession till date of delivery of possession.

13. In the present case in hand the complainant is a subsequent allottee. The said unit was transferred in the favour of the complainant on 16.09.2014 i.e., before the due date of handing over of the possession (27.06.2015) of the allotted unit. As decided in **complainant no. 4031 of 2019 titled as Varun Gupta Vs. Emaar MGF Land Limited**, the authority is of the considered view that in cases where the subsequent allottee had stepped into the shoes of original allottee before the due date of handing over



possession, the delayed possession charges shall be granted w.e.f. due date of handing over possession.

14. The complainant is admittedly the allottee of respondent/builder for a total sum of ₹ 2,43,27,259/-. A buyer's agreement was executed between the parties in this regard on 26.12.2012. The due date for completion of the project was fixed as 27.06.2015. So, in this way, the complainant paid a total sum of ₹ 2,44,34,518/- against the allotted unit. The occupation certificate of the project was received on 24.12.2018 and the possession was offered to the complainants on 27.12.2018.

15. 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."*

16. Clause 10.1 of the buyer's agreement (in short, agreement) provides for handing over of possession and is reproduced below:

Subject to force majeure, timely payment of the total sale consideration and other provisions of this agreement, based upon the company's estimates as per present project plans, the company intends to hand over possession of the apartment within a period of 42 (forty two) months from the date of approval of the building plans or the date of receipt of the approval of the ministry of environment and forests, government of India for the project or execution of this agreement, whichever is later ("commitment period"). The buyer further agrees that the company shall additionally be entitled to a time period of 180 (one hundred and eighty) days ("grace period") after expiry of the commitment period

for unforeseen and unplanned project realities. However, in case of any default under this agreement that is not rectified or remedied by the buyer within the period as may be stipulated, the company shall not be bound by such commitment period.

17. **Due date of handing over possession and admissibility of grace period:** The respondent/promoter has raised the contention that the construction of the project was badly affected on account of force majeure events which occurred during the construction of the said unit i.e., one month on account of several bans imposed by NGT on construction activities in Delhi NCR & one month on account of demonetization policy announced by Govt. of India due to which labour and material was not available for carrying out construction activities. Moreover, the respondent applied for occupation certificate on 09.02.2018 and was granted the OC from the competent authority on 24.12.2018. Accordingly, the authority construing the above-mentioned conditions of the respondent is of the view that the NGT orders are just for one month and because of that no such bad effect would have been observed in carrying out the construction activities also, the event of demonetization took place in the year 2016 and the said event in any case is after the lapse of due date of possession. Lastly, the plea of the respondent regarding application of the OC before the competent authority is also rejected by the authority as firstly, the application was not made before the lapse of the due date of the possession by the respondent secondly, the application was not a complete application as it is evident from the copy of the OC granted by the competent authority that the fire NOC was granted on 11.07.2018 which is after the application was made. Accordingly, the authority hereby reaches to the conclusion that respondent shall not be benefited for its own wrong and the plea for



invoking grace period on grounds of force majeure events is hereby rejected and the grace period of 180 days is not allowed.

18. In this particular case, the Authority considered the above contentions raised by the respondent and observes that the promoter has proposed to hand over the possession of the apartment within a period of 42 months from the date of approval of the building plans or the date of receipt of the approval of the ministry of environment and forests, government of India for the project or execution of this agreement, whichever is later. The authority calculated due date of possession from the date of environment clearance i.e., 27.12.2012 since the date of building plan is not known. The period of 42 months expired on 27.06.2015. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession is 27.06.2015.
19. Further in the judgement of the Hon'ble Supreme Court of India in the cases of Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) RCR (c), 357 reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022. it was observed:

25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled



for interest for the period of delay till handing over possession at the rate prescribed.

20. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a).
21. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges however, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]
1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

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

22. 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.
23. 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., **08.09.2023** is @8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.

24. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, 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;"

25. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.75% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.

G.II Direct the respondent to return ₹ 7,24,899/- unreasonably charged by the respondent by increasing sale price after execution of BBA.

26. The complainant in the present matter states that as per the BBA executed between the parties on 26.12.2012 the cost of the unit was ₹ 2,27,45,482/- and the cost breakup is as follows:

Sno.	Particulars	Amount (in rupees)
1.	BSP	₹ 1,99,86,575/-
2.	Car Parking	₹ 8,24,720/-



3.	EDC	₹ 11,81,024/-
4.	IDC	₹ 94,484/-
5.	Community building security deposit	₹ 1,00,000/-
6.	Community building furnishing charges	₹ 2,06,180/-
7.	Interest free maintenance security deposit	₹ 3,52,500/-

27. Whereas, according to the customer ledger dated 16.09.2021 the respondent gave the cost breakup of the unit wherein IFMD was decreased to ₹ 1,27,645/-, moreover CBSD was also not mentioned in this cost breakup however, charged ₹ 7,24,899/- under the head other charges. Moreover, in the notice for possession letter dated 27.12.2018 the respondent has charged ₹ 19,78,135/- wherein the ADHOC charges such as dual metre charges, piped connection charges, geyser charges, PHE charges etc. are also added. This issue has been specifically adjudicated by the authority in complaint bearing no. **CR/4031/2019 titled as Varun Gupta Vs. Emaar MGF Land Limited** wherein the authority has held that for any other charges like incidental/miscellaneous and of like nature, since the same are not defined and no quantum is specified in the builder buyer's agreement, therefore, the same cannot be charged. Accordingly, the authority while considering the mischievous behaviour of the respondent holds its view that the respondent is wrong in charging the said amount of ₹ 7,24,899/- under the head of other charges.

G.III Direct the respondent to pay ₹ 55,000/- as litigation cost.

28. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as **M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of**



Up & Ors. (supra), has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the adjudicating officer.

29. On consideration of the documents available on record and submissions made by both the parties regarding contravention of 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 10.1 of the agreement executed between the parties on 26.12.2012, the possession of the subject apartment was to be delivered within 42 months from the date of approval of the building plans or the date of receipt of the approval of the ministry of environment and forests, government of India for the project or execution of this agreement, whichever is later. The authority calculated due date of possession from the date of environment clearance i.e., 27.12.2012 since the date of building plan is not known. The period of 42 months expired on 27.06.2015. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession is 27.06.2015. Section 19(10) of the Act obligates the allottees 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 is obtained on 24.12.2018 and the same was obtained after the due date of possession. The respondent offered the possession of the unit in question to the complainant on 27.12.2018. 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.

30. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 27.06.2015 till the offer of the possession i.e., 27.12.2018 plus two months i.e., till 27.02.2019 at prescribed rate i.e., 10.75 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules after deducting the amount paid or adjusted by the respondent on account of delay possession charges, if any.

G. Directions of the authority

31. 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):

- a. The complainant is entitled to delayed possession charges as per the proviso of section 18(1) of the Real Estate (Regulation and Development) act, 2016 at the prescribed rate of interest i.e., 10.75%p.a. for every month of delay on the amount paid by him to the respondent from the due date of possession i.e., 27.06.2015 till

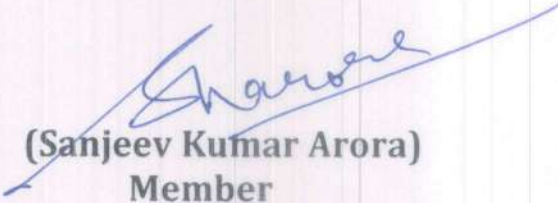


the offer of the possession i.e., 27.12.2018 plus two months i.e., till 27.02.2019 after deducting the amount paid or adjusted by the respondent on account of delay possession charges, if any.

- b. The promoter shall not charge anything which is not part of the buyer's agreement.
- c. The respondent is directed to pay arrears of interest accrued, if any after adjustment in statement of account; within 90 days from the date of this order as per rule 16(2) of the rules.
- d. 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 allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- e. The respondent is directed to refund the amount of ₹ 7,24,899/- as the respondent is wrong in charging the said amount under the head of other charges which is also been adjudicated by the authority in complaint bearing no. **CR/4031/2019 titled as Varun Gupta Vs. Emaar MGF Land Limited** wherein the authority has held that for any other charges like incidental/miscellaneous and of like nature, since the same are not defined and no quantum is specified in the builder buyer's agreement, therefore, the same cannot be charged.

32. The complaint stands disposed of.

33. File be consigned to registry.


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 08.09.2023



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