



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

Complaint no. : 919 of 2019
First date of hearing : 09.07.2019
Date of decision : 05.09.2023

Mr. Ajay Godara
R/o H.No. 1617, Sector 13P, Hisar, Haryana, 125001.

Complainant

Versus

M/s Emaar India Ltd.
(Earlier known as M/s Emaar MGF Land Ltd.)
Address: 306-308, 3rd floor, Square One,
C2, District Centre, New Delhi-110017.

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Member
Member
Member

APPEARANCE:

Shri Sanjeev Sharma
Shri J.K. Dang

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 16.03.2019 has been filed by the complainant/allottee in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible

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

A. Project and unit related details

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

S.No.	Heads	Information
1.	Project name and location	Palm Hills, Sector 77, Gurugram.
2.	Total licensed project area	29.34 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	a) 56 of 2009 dated 31.08.2009 Valid/renewed up to 30.08.2024 b) 62 of 2013 dated 05.08.2013 Valid/renewed up to 04.08.2019
5.	HRERA registered/ not registered	Registered vide no. 256 of 2017 dated 03.10.2017 for 45425.87 sq. mtrs.
	HRERA registration valid up to	02.10.2022
6.	Date of allotment	12.05.2010 [Page 36 of reply]
7.	Unit no. and admeasuring	PH3-50-0601, 6 th floor, tower no. 50 (1450 sq. ft.) [Page 41 of reply]
8.	Date of builder buyer agreement	25.02.2011 [Page 38 of reply]



9.	Possession clause - 11(a)	<p>Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 33 months from the date of start of construction, subject to timely compliance of the provisions of the Buyer's Agreement by the Allottee. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of three months, for applying and obtaining the completion certificate/ occupation certificate in respect of the Unit and/or the Project.</p> <p>[Page 46 of reply]</p>
10.	Date of start of construction	<p>25.02.2011</p> <p>[As per statement of account dated 26.03.2019 at pg. 62 of reply]</p>
11.	Due date of possession	<p>25.11.2013</p> <p>[Note: Grace period not included as it was not utilized for obtaining OC/CC]</p>
12.	Total consideration	<p>₹ 60,93,257/-</p> <p>[As per statement of account dated 26.03.2019 at page 62 of reply]</p>



13.	Amount paid by the complainant	₹ 61,74,876/- [as per statement of account dated 26.03.2019 at page 63 of reply]
14.	Occupation certificate	03.10.2017 [Page 26 of reply]
15.	Offer of possession	07.10.2017 [Page 103 of reply]
16.	Conveyance deed	10.08.2018 [Page 112 of reply]
17.	Compensation credited in favour of the complainant in terms of the settlement agreement dated 08.12.2017	Rs.2,34,900/- [As per statement of account dated 26.03.2019 at page 63 of reply]

B. Facts of the complaint

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

- i. That the original allottee Col. Milan Mathur (original allottee) booked/purchased a residential apartment/flat no. PH3-50-0601 admeasuring 1450 sq. ft. on 22.04.2010 and paid booking amount of Rs.5,00,000/- to the respondent on 22.04.2010.
- ii. That the buyer's agreement was executed between the parties i.e., original allottee & the respondent on 25.02.2011 on the terms and conditions laid down by the company. As per clause 11(a) of the said agreement, the possession of the subject unit was to be handed over lastly by 25.02.2014 (including grace period).



- iii. That the original allottee transferred the flat to Mr. Ajay Godara (complainant) by the sale agreement dated 27.04.2012 on the same terms and conditions with the company. The complainant started paying demand as when demanded by the developer. As per the buyer's agreement, the possession of the unit in question was to be handed over latest by February 2014, however at that time, the construction of the project was far from completion.
- iv. That the complainant after an exorbitant delay of almost 4 years received letter for offer of possession on 07.10.2017 with respect to the unit in question. However, no interest for the delayed period was offered by the respondent to the complainant and aggrieved of which the complainant visited the office of the respondent with the request to pay interest for the delayed possession but the same were in vain.

C. Relief sought

4. The complainant has filed the present complaint for seeking following reliefs:
 - i. Direct the respondent to pay interest at the prescribed rate on account of delay in handing over the possession of the subject unit on the entire deposited amount by the complainant as per the provisions of the Act.
 - ii. The respondent be ordered to recalculate interest to be charged or already charged at the same rate of interest at which he is ordered

- to pay to the allottee i.e. State Bank of India highest marginal cost of lending rate plus two percent.
- iii. The respondent shall be restrained from making threatening demands of the pending dues once the complaint regarding interest etc. is pending before the authority under the Act.
 - iv. The respondent shall be ordered not to charge any holding charges, interest on the pending payments at the time of offer of handing over the possession after the settlement of dues as per the Act.
 - v. The extra money charged on account of parking charges, club housing charges and such other incidental charges be refunded back to the complainant alongwith interest.
5. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has contested the present complaint on the following grounds:
- i. That the predecessor-in-interest of the complainant namely Col. Milan Mathur had approached the respondent sometime in the year 2010 for purchase of an independent unit in its upcoming residential project "Palm Hills" (hereinafter "the project") situated in Sector 77, Village Shikohpur, Gurugram, Haryana. The



predecessor-in-interest of the complainant, in pursuance of the application form dated 12.04.2010, was allotted a unit bearing no. PH3-50-0601, located on the 6th floor measuring 1450 sq. ft. (134.71 sq. meters), in the project vide provisional allotment letter dated 12.05.2010. The predecessor-in-interest of the complainant had consciously and willfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and had further undertaken to be bound by the terms and conditions of the application form.

- ii. That thereafter buyer's agreement dated 25.02.2011 was executed between the predecessor-in-interest of the complainant namely Col. Milan Mathur and the respondent after understanding the terms and conditions stipulated therein to his full satisfaction.
- iii. That the predecessor-in-interest of the complainant at the time of booking of the unit in question had represented and assured the respondent that he would abide by all the terms and conditions of the buyer's agreement. Consequently, various reminders were sent by the respondent to Col. Milan Mathur calling upon him to make payment of the outstanding amounts.
- iv. That thereafter a request letter dated 18.06.2012 had been submitted by predecessor-in-interest of the complainant namely Col. Milan Mathur as well as the complainant with the respondent for transfer of the aforesaid apartment in favour of the



complainant. The complainant after fully satisfying himself had also executed and got attested affidavit dated 22.06.2012 for getting the aforesaid booking/provisional allotment transferred. On the basis of documents referred to above, the provisional allotment of the apartment in question had been transferred by the answering respondent in favour of the complainant.

- v. That in terms of buyer's agreement dated 25.02.2011 executed between Col. Milan Mathur and the respondent, the complainant was bound to make payment of instalments on time and the respondent was under no obligation to remind the complainant of his financial obligations. The complainant also turned out to be a defaulter in making timely payment of sale consideration. Since, the complainant was not making payments as per agreed schedule of payments, letter dated 02.09.2013, 18.10.2013 and 06.11.2013 had been sent by the respondent to the complainant calling upon him to make payment of the outstanding amounts. Letter dated 01.05.2017 had been sent by the respondent to the complainant calling upon the complainant to make payment of HVAT amount. However, the complainant despite receiving the aforesaid letter did not make payment of the demanded amount.
- vi. That a sum of Rs. 77,047/- was liable to be paid by the complainant to the respondent towards delayed payment charges. The complainant on his part had voiced the grievance that there had



occurred delay in delivery of physical possession. It had been explained to the complainant that in terms of buyer's agreement dated 25.02.2011, the complainant was not eligible for any compensation for delay in offering possession. However, the complainant had requested the respondent to pay compensation and the respondent had acceded to the request of the complainant as a goodwill gesture, even though the complainant was not eligible for payment of any compensation amount.

- vii. That agreement dated 08.12.2017 had been executed between the complainant and the respondent. It is pertinent to mention that aforesaid contract had been voluntarily and consciously executed by the complainant. In the said contract, it was categorically recited that the answering respondent would pay compensation amounting to Rs. 2,34,900/- to the complainant in full and final satisfaction of all claims held by the complainant against the answering respondent. The said amount has been duly paid by the answering respondent to the complainant. It was categorically recited in the aforesaid contract that the complainant was not left with any further claims, benefits, compensation etc. of any nature whatsoever regarding the aforesaid apartment. The complainant had undertaken not to raise any further claim, compensation, right etc. of any nature against the answering respondent. The aforesaid

contract is binding upon the answering respondent with full force and effect.

- viii. That the respondent had applied for occupation certificate on 22.11.2016. It is pertinent to note that once an application for grant of occupation certificate was submitted for approval in the office of the concerned statutory authority. The grant of occupation certificate is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence. Therefore, the time period utilised by the concerned statutory authority in granting the occupation certificate needs to be necessarily excluded from computation of the time period utilised for implementation of the project.
- ix. That the project has got delayed on account of the following reasons which were/are beyond the power and control of the respondent:
- The building plans for the apartment/tower in question was approved by the competent authority under the then applicable National Building Code in terms of which buildings having height of 15mtrs. or above but having area of less than 500 sq. mtrs. on each floor, were being approved by the competent authorities with a single staircase and construction was being carried out accordingly. Subsequently, the National Building

Code (NBC) was revised in the year 2016 and in terms of the same, all high-rise buildings (i.e. buildings having height of 15 mtrs. and above), irrespective of the area of each floor, are now required to have two staircases. Furthermore, it was notified vide Gazette published on 15.03.2017 that the provisions of NBC 2016 supersede those of NBC 2005.

- The Fire Department is seeking to retrospectively apply the said provision and while processing the Fire NOC application has been insisting on two staircases in all high rise buildings even in cases where the building plans stood approved with a provision for a single staircase and which have been constructed accordingly. The Fire Department has issued a provisional Fire NOC with the requirement that the second staircase would be constructed by the Developer within one year from the date of issuance of the provisional Fire NOC. In view of the practical difficulties in constructing a second staircase in a building that already stands constructed according to duly approved plans, the respondent made several representations to various Government Authorities requesting that the requirement of a second staircase in such cases be dispensed with.

- That the respondent had engaged the services of Mitra Guha, a reputed contractor in real estate, to provide multi-level car parking in the project. The said contractor started raising certain false and frivolous issues with the respondent due to which the contractor slowed down the progress of work at site.
- x. That several allottees, including the complainant, have defaulted in timely remittance of payment of installments which was an essential, crucial and an indispensable requirement for conceptualisation and development of the project in question. The respondent, despite default of several allottees, has diligently and earnestly pursued the development of the project in question and has constructed the project in question as expeditiously as possible. It is submitted that the construction of the tower in which the unit in question is situate is complete and the respondent has already obtained occupation certificate.
- xi. That the physical possession was offered by the answering respondent to the complainant vide letter dated 07.10.2015 dispatched on 10.10.2015. By virtue of aforesaid letter, the answering respondent had called upon the complainant to make payment of the amount of Rs. 8,74,877/- which was outstanding and payable by the complainant in respect of the apartment referred to above. Moreover, the conveyance deed for the unit in

question has already been registered in favour of the complainant on 10.08.2018. Therefore, it is most respectfully submitted that this complaint deserves to be dismissed at the very outset.

xii. That there is no default or lapse on the part of the respondent and there is no equity in favour of the complainant. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

7. Copies of all the relevant documents have been filed and placed on 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 plea of the respondent 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.1 Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with 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 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 as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the relief sought by the complainant

F.I Possession and delay possession charges

12. **Reliefs sought by the complainant:** The below-mentioned reliefs sought by the complainant is being taken together as the findings in one



relief will definitely affect the result of the other relief and the same being interconnected:

- i. Direct the respondent to pay interest at the prescribed rate on account of delay in handing over the possession of the unit in dispute on the entire deposited amount by the complainant as per the provisions of the Act.
 - ii. The respondent be ordered to recalculate interest to be charged or already charged at the same rate of interest at which he is ordered to pay to the allottee i.e. State Bank of India highest marginal cost of lending rate plus two percent.
 - iii. The respondent shall be restrained from making threatening demands of the pending dues once the complaint regarding interest etc. is pending before the authority under the Act.
13. 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."

14. Clause 11(a) of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

"11. POSSESSION

(a) Time of handing over the Possession

Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions,

*formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the Unit within **33 months from the date of start of construction**, subject to timely compliance of the provisions of the Buyer's Agreement by the Allottee. The Allottee(s) agrees and understands that the Company shall be entitled to **a grace period of three months, for applying and obtaining the completion certificate/ occupation certificate** in respect of the Unit and/or the Project."*

(Emphasis supplied)

15. **Due date of handing over possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 33 months from the date of start of construction and it is further provided in the agreement that promoter shall be entitled to a grace period of 3 months for applying and obtaining completion certificate/occupation certificate in respect of said unit/project. The construction commenced on 25.02.2011 as per the statement of account dated 26.03.2019. The period of 33 months expired on 25.11.2013. As a matter of fact, the promoter has not applied to the concerned authority for obtaining completion certificate/occupation certificate within the time limit prescribed by the promoter in the buyer's agreement. As per the settled law one cannot be allowed to take advantage of his own wrong. Accordingly, this grace period of 3 months cannot be allowed to the promoter at this stage. Therefore, the due date of handing over possession as per the buyer's agreement comes out to be 25.11.2013.
16. The counsel for the complainant states that the unit was allotted vide letter dated 12.05.2010 and a BBA was executed on 25.02.2011 and



subsequently the complainant- allottee has entered into the shoes of the original allottee and the said buyer's agreement was endorsed in favour of the complainant on 22.06.2012. Further, the counsel for the complainant states that the agreement, stated to be settlement agreement in para no.1 of the recitals dated 08.12.2017, has been got signed by the respondent from the complainant after offer of possession and before execution of conveyance deed. The complainant-allottee has been waiting for the unit for the last 5 years and hence has signed a settlement agreement on 08.12.2017 before taking over of possession as a condition for handing over of possession and the same was signed under duress and hence, is entitled for statutory rights of delayed possession charges as prescribed under the Act, 2016 and the respondent may adjust whatever compensation amount was paid/adjusted in the statement of account.

17. However, the counsel for the respondent states that the above settlement agreement was signed by the complainant after offer of possession in his free will and without any pressure or duress and has concealed the fact of signing of above settlement agreement in the complaint. Further, compensation of an amount of Rs.2,34,900/- has already been adjusted/credited in the account of the complainant as per above settlement agreement and the same cannot be agitated before this authority at this stage. The counsel for the respondent has submitted the citations of various Courts wherein it has been held that



when there is a written agreement between the parties, the consumer fora have to consider the relief in the light of such agreement and the complainant was required to approach the court with clean hands which has not been done in the above complaint. The counsel for the respondent states that the agreement is valid, and the complainant has already taken advantage of the said settlement agreement and the matter cannot be re-opened at this stage. The complainant has failed to reveal the facts of the agreement in the complaint.

18. The authority observes that in the present complaint, the buyer's agreement was executed on 25.02.2011 and the due date of possession as computed above is 25.11.2013. It is important to note that the name of the complainant was endorsed on the buyer's agreement on 22.06.2012 which is prior to the due date of handing over possession. However, the possession of the subject unit was offered to the complainant on 07.10.2017 i.e., after a delay of about 3 years and 10 months. Thereafter, a settlement agreement was allegedly executed between the parties on 08.12.2017. Now, the question posed before the authority is whether the complainant is entitled to relief under the Act after the execution of the settlement deed dated 08.12.2017?
19. A deed of settlement is legal document which formalises an agreement between the parties to settle a dispute. It is an alternative to litigation and has legally binding terms the parties have agreed upon. One of the essential requirements of the settlement deed/agreement is that the



execution page must include the names and signatures of all parties to the deed/agreement of settlement and names and signatures of the attesting witnesses if, any.

20. The authority has considered the rival submissions made on behalf of both the parties. It is also not disputed that in pursuant to the 'settlement agreement' dated 08.12.2017, the complainant received a sum of Rs.2,34,900/- as compensation for delay in handing over possession as is evident from statement of account dated 26.03.2019 [annexure R7, page 62 of reply]. It is contended on behalf of the complainant that the settlement agreement dated 08.12.2017 was executed as a condition for handing over of possession and was signed under duress, so the settlement agreement is not binding on the complainant and is entitled for statutory rights of delayed possession charges as prescribed under the Act, 2016. So, taking into consideration all these facts, it is to be seen as to whether the settlement agreement entered into between the parties on 30.11.2016 is binding on the parties. **Firstly**, the settlement deed dated 08.12.2017 does not bear the signature of the respondent. Thus, cannot be treated as executed and binding documents between the parties and does not have any relevance in the eyes of law. However, it is admitted fact that the compensation of Rs.2,34,900/- was payable as compensation under the settlement agreement and has been paid to the complainant by the respondent. As per clause 13 of the buyer's agreement, the allottee(s)



shall be entitled to payment of compensation for delay at the rate of Rs.7.50/- per sq. ft. per month of the super area till the date of notice of possession. The promoter cannot take advantage of its dominant position. It is observed that the compensation as per the buyer's agreement i.e., @ Rs.7.50/- per sq. ft. per month of super area is very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of *Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and ors. (W.P 2737 of 2017)*, wherein the Hon'ble Bombay HC bench held that:

"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."

21. **Secondly**, even if, the delay possession charges are calculated at the rate committed in the buyer's agreement, it may perhaps exceed the amount given to the complainant towards delay possession charges as a gesture of goodwill in the settlement agreement though the complainant was/is entitled to delay possession charges as prescribed in proviso to section 18(1) of the Act read with rule 15 of the rules.
22. Hon'ble Supreme Court and various High Courts in a plethora of judgments have held that the terms of a contract shall not be binding if



it is shown that the same were one sided and unfair and the person signing did not have any other option but to sign the same. Reference can also be placed on the directions rendered by the Hon'ble Apex Court in civil appeal no. 12238 of 2018 titled as ***Pioneer Urban Land and Infrastructure Limited Vs. Govindan Raghavan*** (decided on 02.04.2019) as well as by the Hon'ble Bombay High Court in the ***Neelkamal Realtors Suburban Pvt. Ltd.*** (supra). A similar view has also been taken by the Apex court in ***IREO Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors.*** (Civil appeal no. 5785 of 2019 dated 11.01.2021) as under:

".....that the incorporation of such one-sided and unreasonable clauses in the Apartment Buyer's Agreement constitutes an unfair trade practice under Section 2(1)(r) of the Consumer Protection Act. Even under the 1986 Act, the powers of the consumer fora were in no manner constrained to declare a contractual term as unfair or one-sided as an incident of the power to discontinue unfair or restrictive trade practices. An "unfair contract" has been defined under the 2019 Act, and powers have been conferred on the State Consumer Fora and the National Commission to declare contractual terms which are unfair, as null and void. This is a statutory recognition of a power which was implicit under the 1986 Act.

In view of the above, we hold that the Developer cannot compel the apartment buyers to be bound by the one-sided contractual terms contained in the Apartment Buyer's Agreement."

The same analogy can easily be applied in the present case where the respondent is promising to give very nominal amount of compensation and the complainant cannot be bound by such one-sided clause

23. **Thirdly**, the Hon'ble Bombay High Court in the **Neelkamal Realtors Suburban Pvt. Ltd.** (supra) has held that the scheme of the Act is retroactive in character and the relevant para is reproduced below:

"122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

24. Accordingly, a law can be even framed to affect subsisting/existing contractual rights between the parties in the larger public interest as has been done in this Act where specific remedy has been provided under section 18 of the Act, in case of failure of promoter to handover possession as per agreement for sale and this specific remedy abrogates provisions of the agreement to that extent. Also, it is matter of fact that the provision of section 18 of the Act has not come into effect at the time when the parties entered into the settlement agreement dated 08.12.2017. Thus, due to retroactive nature of section 18 of the Act, the complainant is entitled to prescribed rate of interest as per the provisions of the Act and not nominal compensation as per the terms of the buyer's agreement/settlement agreement.
25. The counsel for the respondent has stated that the matter relating to delay possession charges after execution of conveyance deed is under



consideration with the Appellate Tribunal in appeal No.94 of 2022 filed by Emaar India Ltd versus Ruchika Ahuja in which it has been submitted that apart from other issues involved in the matter, one of the primary issue which may fall for consideration of this Tribunal on 14.07.2023 would be with respect to effect to execution of conveyance deed prior to filing of complaint and acceptance of compensation by the allottee before the execution of conveyance deed and the case was adjourned to 20.09.2023.

26. The authority observes that there is neither any direction from the Hon'ble Appellate Tribunal for not dealing with such matters nor there is any stay in proceeding with the complaints where conveyance deed has been executed.
27. In light of the aforesaid reasons, the authority is of the view that it cannot take into consideration such settlement agreement as the same does not bear the signature of the respondent and cannot be termed as 'duly executed'. Moreover, the complainant allottee has approached the authority by way of filing of above complaint immediately after taking over of possession and signing of conveyance deed for which he has been waiting for about 7 years since signing of buyer's agreement. In view of the same, the authority has decided to proceed with the complaint as such.
28. **Admissibility of delay possession charges at 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.

29. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
30. 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., 05.09.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
31. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the



due date as per the agreement. The subject unit was booked by Col. Milan Mathur i.e., original allottee and the buyer's agreement was executed between the original allottee and the respondent. The said buyer's agreement was endorsed in favour of the complainant on 22.06.2012. By virtue of clause 11(a) of the buyer's agreement executed between the parties on 25.02.2011, the possession of the said unit was to be delivered within a period of 33 months from the date of start of construction and it is further provided in agreement that promoter shall be entitled to a grace period of 3 months for applying and obtaining completion certificate/occupation certificate in respect of said unit/project. As far as grace period is concerned, the same is disallowed for the reasons quoted above. The construction commenced on 25.02.2011 as per statement of account dated 26.03.2019. Therefore, the due date of handing over possession comes out to be 25.11.2013. In the present case, the complainant was offered possession by the respondent on 07.10.2017 after obtaining occupation certificate on 03.10.2017 from the competent authority. Thereafter, the conveyance deed was executed on 10.08.2017. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 25.02.2011 executed between the parties.

32. 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 was granted by the competent authority on 03.10.2017. However, the respondent offered the possession of the unit in question to the complainant only on 07.10.2017, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, he should be given 2 months' time from the date of offer of possession. These 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 25.11.2013 till the expiry of 2 months from the date of offer of possession (07.10.2017) which comes out to be 07.12.2017.
33. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at prescribed rate of the interest @ 10.75 % p.a. w.e.f. due date of possession i.e., 25.11.2013 till 07.12.2017 i.e., offer of possession



(07.10.2017) plus 2 months as per provisions of section 18(1) of the Act read with rule 15 of the rules. The respondent has already paid Rs.2,34,900/- towards delay in handing over possession in view of settlement agreement dated 08.12.2017. Therefore, the amount i.e. Rs.2.34,900/- already paid to the complainant by the respondent as delay compensation shall be adjusted towards delay possession charges payable by the promoter at the prescribed rate of interest to be paid by the respondent as per the proviso to section 18(1) of the Act.

F.II Holding charges and Maintenance charges

Relief sought by the complainant: The respondent shall be ordered not to charge any holding charges, interest on the pending payments at the time of offer of handing over the possession after the settlement of dues as per the Act.

34. **Holding charges:** The respondent is not entitled to claim holding charges from the complainant at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.
35. **Maintenance charges:** As per letter of offer of possession dated 07.10.2017, the respondent has demanded an amount of Rs.1,43,724/- (Rs.3.5/- per sq. ft. + GST @18% for 24 months). The authority is of the view that the maintenance charges are payable after two months from the date of offer of possession. The respondent is right in demanding maintenance charges at the time of offer of possession dated



07.10.2017 which would be applicable after 07.12.2017 that is the statutory period provided for taking possession of the subject unit by an allottee. However, the respondent shall not demand the advance maintenance charges for more than a period of one year from the allottee as has been comprehensively decided by authority in complaint bearing no. *CR/4031/2019 titled as Varun Gupta Vs. Emaar MGF Land Ltd.*

F.III Parking charges, club membership charges

Relief sought by the complainant: The extra money charged on account of parking charges, club housing charges and such other incidental charges be refunded back to the complainant alongwith interest.

Car Parking

36. As far as issue regarding covered car parking is concerned where the said agreements have been entered into before coming into force the Act, the matter is to be dealt with as per the provisions of the builder buyer's agreement subject to that the allotted parking area is not included in super area.
37. As per clause 1.2(a)(i) and Annexure 3 of the buyer's agreement 25.02.2011, the allottee had agreed to pay the cost of covered car parking charges over and above the basic sale price. The cost of covered car parking of Rs.2,00,000/- has been charged exclusive to the basic price of the unit as per the terms of the agreement. The cost of parking

of Rs.2,00,000/- has already been included in the total sale consideration and the same is charged as per the buyer's agreement. Accordingly, the promoter is justified in charging the same.

Club membership charges


38. The authority observes that the complainant has agreed to pay club membership charges amounting to Rs.50,000/- in terms of clause 3 and payment plan annexed with the buyer's agreement dated 25.02.2011. The issue of club membership charges is already decided by the authority in *CR/3203/2020 titled as Vijay Kumar Jadhav Vs. M/s BPTP Limited and anr.* and accordingly, shall apply in this case.

G. Directions of the authority

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

- i. The respondent is directed to pay the interest at the prescribed rate i.e. 10.75 % p.a. w.e.f. due date of possession i.e., 25.11.2013 till 07.12.2017 i.e., offer of possession (07.10.2017) plus 2 months as per provisions of section 18(1) of the Act read with rule 15 of the rules. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule

- 16(2) of the rules after adjusting the amount of Rs. 2,34,900/- already paid to the complainant by the respondent as delay compensation.
- ii. The maintenance charges are payable after two months from the date of offer of possession. The respondent is right in demanding maintenance charges at the time of offer of possession dated 07.10.2017 which would be applicable after 07.12.2017 that is the statutory period provided for taking possession of the subject unit by an allottee.
- iii. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement. The respondent is also not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.
39. Complaint stands disposed of.
40. File be consigned to registry.




(Sanjeev Kumar Arora)

Member



(Ashok Sangwan)

Member



(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.09.2023