

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

Complaint no. :	6771 of 2022
Date of filing complaint:	27.10.2022
Date of decision :	12.12.2023

Gaurika Mathur Tarun Mathur Both R/O: Flat No 502, Tower 4, Bestech Parkview Residency, Sector 3, Palam Vihar, Gurgaon, Haryana 122017	<b>Complainants</b>
Versus	
M/S Emaar Mgf Land Ltd. Regd. Office: Ece House, 28, Kasturba Gandhi Marg, New Delhi 110001	<b>Respondent</b>
<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
Shri Ashok Sangwan	<b>Member</b>
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Jagdeep Kumar(Advocate)	Complainant
Sh. Dhruv Rohtagi (Advocate)	Respondent

**ORDER**

1. The present 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 29 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 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. Unit and project 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 and delay period, if any, have been detailed in the following tabular form:

S.no.	Particulars	Details
1.	Name of the project	Palm Gardens, Sector 83, Gurugram, Haryana
2.	Nature of the project	Residential
3.	DTCP license no. and validity status	108 of 2010 dated 18.12.2010 for 21.9 acres Valid/renewed up to 17.12.2023
4.	HRERA registered/ not registered	Registered vide no. 330 of 2017 dated 24.10.2017
5.	HRERA registration valid up to	31.12.2018
6.	Unit no.	PGN - 11 0405 4 <sup>th</sup> floor tower 11 1900 sq. ft. [page 33 of complaint]
7.	Allotment letter allotted to the present complainant	15.09.2011 (Page 51 of reply)
8.	Date of execution of buyer's agreement	03.11. 2011 [page 31 of complaint]
9.	Possession clause	<b>10. POSSESSION</b> <b>(a) Time of handing over the Possession</b>

		<p><i>Subject to terms of this clause and barring force majeure conditions, subject to the Allottee having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this 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 <b>36 (Thirty Six) months from the date of start of construction</b>, subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the Company shall be entitled to a <b>grace period of 3 (three) months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project.</b></i></p> <p>(Emphasis supplied)                  [page 53 of complaint]</p>
10.	Date of start of construction as per statement of account dated  13.12 .2022 at page 134 of reply	30.11.2012
11.	Due date of possession	30.11.2015 [Note: Grace period is not included]
12.	Total consideration as per statement of account dated 13.12 .2022 at page 134 of reply	₹ 1,06,82,072/-
13.	Amount paid as per statement of account dated 13.12 .2022 at page 134 of reply	₹ 1,07,87,322/- (Inadvertently mentioned in the proceeding of the day as Rs. 1,06,82,073/- )

14.	Occupation certificate	17.10.2019 [page 116 of reply]
15.	Offer of possession	19.10.2019 [page 122 of reply]

**B. Facts of the complaints:**

3. That the respondent had advertised itself as a very ethical business group that lives onto its commitments in delivering its housing projects as per promised quality standards and agreed timelines. Somewhere in the month of August 2011, the respondent through its business development associate approached the complainants with an offer to invest and buy a flat in the proposed project of the respondent, which the respondent was going to launch the project namely "Palm Gardens" in the Sector-83, Gurugram. On 07.09.2011 the complainants had a meeting with the respondent at their branch office "Emaar Business Park, Mg Road, Sikanderpur Chowk, Sector 28, Gurugram 122002" where the respondent explained the project details of "Gurgaon Greens" and highlight the amenities of the project (Gurgoan Greens)
4. That the respondent had further assured to the complainants that the respondent has already processed the file for all the necessary sanctions and approvals from the appropriate and concerned authorities for the development and completion of said project on time with the promised quality and specification. The respondent had also shown the brochures and advertisement material of the said project to

the complainant given by the respondent and assured that the allotment letter and builder buyer agreement for the said project would be issued to the complainants within one week of booking to made by the complainants. The complainants while relying upon those assurances and believing them to be true, they booked a residential unit bearing No. 0405 on 4" Floor in Tower - 11 in the proposed project of the respondent measuring approximately super area of 1900 Sq. ft. Accordingly the complainants have paid Rs. 7,50,000/- through cheque bearing No 619249 dt 07/09/2011 as booking amount on 07.09.2011.

5. That in the said application form, the price of the said flat was agreed at the rate of Rs. 4290/- per sq. ft. mentioned in the said application form. At the time of execution of the said application form, it was agreed and promised by the respondent that there shall be no change, amendment or variation in the area or sale price of the said flat from the area or the price committed by the respondent in the said application form or agreed otherwise.
6. That approximately after two months on 03.11.2011 the respondent executed builder buyer agreement which consisted very stringent and biased contractual terms which are illegal, arbitrary, unilateral and discriminatory in nature, because every clause of agreement is drafted in a one-sided way and a single breach of unilateral terms of buyer agreement by complainant, will cost him forfeiting of 15% of total consideration value of unit. The respondent exorbitantly increased the

net consideration value of flat by adding EDC, IDC and PLC and when the complainants opposed the unfair trade practices of respondent they inform that EDC, IDC and PLC are just the government levies and they are as per the standard rules of government and these are just approximate values which may come less at the end of project and same can be proportionately adjusted on prorata basis and about the delay payment charges of 24% they said this is standard rule of company and company will also compensate at the rate of Rs 7.5 per sq ft per month in case of delay in possession of flat by company. The complainants opposed these illegal, arbitrary, unilateral and discriminatory terms of provisional allotment letter but as there is no other option left with complainants because if the complainants stop the further payment of installments then in that case the respondent will forfeit 15% of total consideration value from the total amount paid by complainants.

7. That as per annexure-III (schedule of payments) of the buyer's agreement the total sale consideration exclusive of st and gst taxes is Rs. 1,01,89,463/- (Which includes the charges towards the Basic Price- Rs. 81,52,663/-, exclusive/dedicated covered car parking Rs 300000, EDC & IDC Rs 7,36,801/-, Club Membership Rs 50000, IFMS Rs 95000 , PLC for Corner Rs 1,90,000/- and PLC for Mini Golf View - Rs 665000/-). But later at the time of possession the respondent add Rs 1,29,140/- in the sale consideration in the name of electricity connection charges and add Rs. 14,160/- in the name of administrative charges without any reason for the same and that way the respondent increased the sale

consideration by Rs. 1,43,300/- (Rs 129140 + Rs 14160) without any reason which is a illegal, arbitrary unilateral and unfair trade practice. The complainants opposed the increase in sales consideration at time of possession but respondent did not pay any attention to complainants.

8. That as per the clause - 10(a) of the said buyer's agreement dated 03.11.2011 the respondent had agreed and promise to complete the construction of the said flat and deliver its possession within a period of 36 months with a three (3) months grace period thereon from the date of start of construction (date of start of construction is 30.11.2012) . However the respondent has breached the terms of said flat buyer agreement and failed to fulfill its obligations and has not delivered possession of said unit within the agreed time frame of the builder buyer agreement. The proposed possession date as per buyer's agreement was due on 30.11.2015.
9. That the complainants has paid the entire sale consideration along with applicable taxes to the respondent for the said unit. As per the statement dated 17.08.2022, issued by the respondent, upon the request of the complainants, the complainants have already paid Rs. 1,07,87,322/- towards total sale consideration plus taxes as on today to the respondent and now nothing is pending to be paid on the part of complainants. Although the respondent charges Rs. 1,17,045/-extra on sales price without stating any reason for the same.

10. That on the date agreed for the delivery of possession of said unit as per date of booking and later on according to the buyer's agreement is 30.11.2015, the complainants 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 complainants about the completion and delivery said flat. The complainants thereafter kept running from pillar to post asking for the delivery of his home but could not succeed in getting any reliable answer. The conduct on part of the respondent regarding delay in delivery of possession of the said unit has clearly manifested that the respondent never ever had any intention to deliver the said unit on time as agreed.
11. That the offer of possession offered by the respondent through "Intimation of Possession" was not a valid offer of possession because respondent was offered the possession on dated 19.10.2019 with stringent condition to pay certain amounts which are never be a part of agreement and the respondent did not received the completion certificate of various other towers of the project and as on 19.10.2019 project was delayed with the time of approx. four years. At the time of offer of possession builder did not adjusted the penalty for delay possession as per the RERA Act 2016. In case of delay payment, builder charged the penalty @24% per annum and in delay in possession give the Rs. 7.5/- sq ft . The respondent also demanded an Indemnity-cum-Undertaking along with final payment, which is illegal and unilateral demand. The respondent did not even allow the complainants to visit



the property at "palm gardens" before clearing the final demand raised by respondent along with the Offer of possession. The respondent demanded one year advance maintenance charges from the complainants which was never agreed under the buyer's agreement and respondent also demanded a lean marked FD of Rs. 2,08,136/- in pretext of future liability against HVAT which are also a unfair trade practice.

12. That the complainants informed the respondent about his unfair trade practice about delay possession penalty and also enquires the construction status of rest of project through telephonically but the respondent does not want answer any enquiry before getting complete payment against his final demand. The complainants made it clear to the respondent that they cannot demand excess money along with offer of possession and demand of indemnity-cum-undertaking is unlawful and demand of lien FD of Rs 2,08,136/- is also not lawful. The complainants constantly was chasing the respondent through emails and telephonically for offering a lawful valid offer of possession along with the adjustment of delay possession charges as per RERA Act 2016 but till date the respondent has failed to offer a valid offer of possession to the complainants. The respondent is also imposing holding charges and maintenance on the complainants for creating a mental to accept the invalid offer of possession and furnish Indemnity-cum-undertaking which is a unlawful trade practice.

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

13. The complainants have sought following relief(s):

- i. Direct the respondent to pay interest at the prescribed rate of interest for every month of delay.
- ii. Direct the respondent to provide immediate possession of the flat without taking any indemnity cum undertaking.
- iii. Direct the respondent to return Rs.1,43,300/-amount unreasonably charged in the name of other charges (which includes Rs. 1,29,140/- for electricity connection charges and Rs. 14160/- in the name of administrative charges after execution of buyer's agreement.
- iv. Direct the respondent from restraining in demanding lien marked fixed deposit of Rs. 2,08,136/- in favour of the respondent on the pretext of future payment of HVAT for the period of (01.04.2014 to 30.06.2017).
- v. Direct the respondent to return entire amount paid as GST by complainant between 01.07.2017 to 12.04.2018.
- vi. Direct the respondent to restrain from charging holding charges and maintenance charges from the complainants.
- vii. Direct the respondent to pay an amount of Rs. 2,00,000/- to the complainants as litigation cost.

14. 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 respondent:**

15. The respondent by way of written reply made the following submissions: -
16. That it is submitted that the respondent has already offered possession of the unit in question to the complainants, who has failed to complete all the formalities and take possession of the unit, as such, the respondent has already complied with its obligations under the buyer's agreement.
17. That the complainants had approached the respondent and expressed an interest in booking an apartment in the residential group housing colony developed by the respondent and booked the unit in question, bearing number PGN-11-0405, 4th floor admeasuring 1900 s. ft. (tentative area situated in the project developed by the respondent, known as "Palm Gardens" at Sector 83, Village Kherki Daula, Gurugram, Haryana. Thereafter the complainants vide application form dated 02.09.2011 applied for provisional allotment of a unit bearing number PGN-11-0405 in the project. It is submitted that the complainants prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the complainants were fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondent to undertake development of the same, that the complainants took an

independent and informed decision to purchase the unit, un-influenced in any manner by the respondent.

18. That the complainants consciously and willfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that the complainants shall remit every installment on time as per the payment schedule. The respondent issued the provisional allotment letter dated 15.09.2011 to the complainants.
19. That it needs to be highlighted that the complainants were not forthcoming with the outstanding amounts as per the schedule of payments. The respondent was constrained to issue payment letters and reminders to the complainants. It was further conveyed by the respondent to the complainants that in the event of failure to remit the amounts mentioned in the said notice, the respondent would be constrained to cancel the provisional allotment of the unit in question.
20. That subsequently, the respondent sent the buyer's agreement to the complainants, which was executed between the parties on 03.11.2011. It is pertinent to mention that the buyer's agreement was consciously and voluntarily executed by the complainants after reading and understanding the contents thereof to his full satisfaction. Clause 10(a) of the buyer's agreement provides that subject to the allottee having complied with all the terms and conditions of the agreement, and not being in default of the same, possession of the apartment would be

handed over within 36 months from the date of start of construction. It has further been specified in the same clause that the respondent will be entitled to a grace period of 3 months. Clause 10(b) provides that the time period for delivery of possession shall stand extended on the occurrence of delay for reasons beyond the control of the respondent. In terms of clause 10(b)(iv) in the event of default in payment of amounts demanded by the respondent as per the schedule of payment under the buyer's agreement, the time for delivery of possession shall also stand extended.

21. That it is pertinent to mention that Clause 12(c) of the buyer's agreement provides that compensation for any delay in delivery of possession shall only be given to such allottees who are not in default of their obligations envisaged under the agreement and who have not defaulted in payment of installments as per the payment plan incorporated in the agreement. Therefore, the complainants, being defaulters, are not entitled to any compensation from the respondent. That the complainants are conscious and aware of the fact that they are not entitled to any right or claim against the respondent.
22. That furthermore, in clause 12(d) of the buyer's agreement it has been specified that in case of delay caused due to non- receipt of occupation certificate, completion certificate or any other permission/ sanction from the competent authorities, no compensation or any other compensation shall be payable to the allottees. It needs to be

highlighted that the respondent completed the construction and had submitted an application on 11.02.2019 for grant of occupation certificate before the concerned statutory authority. The occupation certificate has been granted by the concerned department vide memo dated 17.10.2019. It is respectfully submitted that once an application for grant of occupation certificate is submitted to the concerned statutory authority the respondent ceases to have any control over the same.

23. That in the meanwhile, the project was registered under the provisions of the Act. Registration certificate granted by the Haryana Real Estate Regulatory Authority vide memo no. HRERA-142/2017/1712 dated 24.10.2017 .Furthermore, the registration has been extended by the Hon'ble Authority vide certificate dated 02.08.2019. It is submitted that the registration of the project was valid till 31.12.2019. It is pertinent to mention that the respondent on receipt of the occupation certificate, offered possession of the said unit to the complainants vide the letter of offer of possession dated 19.10.2019 and subsequent reminders subject to making payments and submission of necessary documents. The complainants have failed to comply with its obligations to take the possession of the unit in question. The instant complaint is a gross misuse of process of law.
24. That it is pertinent to mention that the complainants did not have adequate funds to remit the balance payments requisite for obtaining

possession in terms of the buyer's agreement and consequently in order to needlessly linger on the matter, the complainants refrained from obtaining possession of the unit in question.

25. The complainants have consciously and maliciously refrained from obtaining possession of the unit in question. Consequently, the complainants are liable for the consequences including holding charges, as enumerated in the buyer's agreement, for not obtaining possession. The complainants failed to take possession of the unit even after two months from the date of receipt of the occupation certificate.
26. That, without admitting or acknowledging the truth or legality of the allegations advanced by the complainants and without prejudice to the contentions of the respondent, it is respectfully submitted that the respondent had credited a sum of Rs. 89,662/- towards EDC interest, a sum of Rs. 16,663 /- as benefit on account of Anti-Profiting and a sum of Rs. 44,201 /- on account of Early Payment Rebate (EPR). Further, without prejudice to the contentions of the respondent, as a one-time goodwill gesture, the respondent has credited an amount of Rs. 6,22,042/- as compensation as per the terms and conditions of the buyer's agreement.
27. It is submitted that the total sale consideration of the said unit is Rs. 1,06,82,073/- excluding stamp duty, registration charges etc. That as per the calculation sheet and statement of account, there is an outstanding due of Rs. 4,27,883/- towards holding charges. Over and

above the said amount, the complainants, in order to get the conveyance/sale deed executed are further liable to pay the stamp duty @ 6% i.e., Rs. 5,58,480/- along with Rs. 50,003/- as other ancillary charges towards e-challan. It is submitted that the respondent issued multiple payment request letters but no heed was given to them and all in vain.

28. That the respondent was faced with certain other force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. It is pertinent to state that the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide Order dated 2.11.2015 mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna River bed. These orders infact inter-alia continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High Court and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was almost 2 years that the scarcity as detailed aforesaid continued, despite which all efforts were made and



materials were procured at 3-4 times the rate and the construction continued without shifting any extra burden to the customer. The time taken by the Respondent to develop the project is the usual time taken to develop a project of such a large scale. Further, the parties have agreed that in the event of delay, the Allottee shall be entitled to compensation on the amounts paid by the allottee, which shall be adjusted at the time of handing over of possession/ execution of conveyance deed subject to the allottee not being in default under any of the terms of the agreement.

29. That it is pertinent to note that due to the non-compliance of terms and conditions of the Buyer's Agreement and despite of issuing letter of offer of possession, payment requests letters, notices, reminders, the complainants didn't come forward to clear the outstanding dues and to take the possession of the said unit in question, hence, the respondent was constrained and left with no other option but to issue the legal notice. That the legal notice dated 23.03.2022 was issued to the complainants calling upon them to complete the documentation process and necessary formalities for taking the possession of the said unit and to execute the conveyance deed but the complainants failed to abide by the legal notice.
30. That without admitting or acknowledging in any manner the truth or legality of the allegations levelled by the complainants and without prejudice to the contentions of the respondent, it is submitted that the

project has got delayed on account that the contractor hired by the respondent i.e. ILFS (M/s Infrastructure Leasing & Financial Services), a reputed contractor in real estate, started raising certain false and frivolous issues with the respondent due to which they had slowed down the progress of work at site. The respondent was constrained to issue several letters to ILFS requesting it to proceed and complete the construction work in accordance with the decided schedule. However, ILFS continued with its wanton acts of instigating frivolous and false disputes for reasons best known to it is submitted that the respondent cannot exercise any influence over the working of ILFS. ILFS has intentionally delayed the progress of construction for which the respondent cannot be held liable.

31. 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 submission made by the parties.

**E. Jurisdiction of the authority:**

32. 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**

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 complete territorial jurisdiction to deal with the present complaint.

#### **E. II Subject matter jurisdiction**

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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 allottee and the real estate agents under this Act and the rules and regulations made thereunder.*

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 complainants :**

**F.1 Direct the respondent to pay interest at the prescribed rate of interest for every month of delay.**

**F.II Direct the respondent to provide immediate possession of the flat without taking any indemnity cum undertaking.**

33. 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."*

34. Clause 10 of the buyer's agreement 03.11.2011 provides for handing over of possession and is reproduced below:

***"Clause 10 POSSESSION***

***(a) Time of handing over the possession***

*Subject to terms of this clause and barring force majeure conditions, subject to the Allottee having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 36 (Thirty Six) months from the date of start of construction, subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the Company shall be entitled to a grace period of 3 (three) months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project.*

35. The promoter has proposed to hand over the possession of the said unit within period of thirty six 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 90 days for applying and obtaining occupation

certificate in respect of the unit. The period of 36 months expired on 30.11.2015. As a matter of fact, the promoter has not applied to the concerned authority for obtaining 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 90 days cannot be allowed to the promoter at this stage. Therefore, the due date of possession comes out to be 30.11.2015.

36. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant are 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.*

37. 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.

38. 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., 12.12.2023 is @ 8.75 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
39. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. — For the purpose of this clause—*

- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*
- (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

40. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.75% by the respondent/promoters which is the same as is being granted to them in case of delayed possession charges.
41. On consideration of the documents available on record and submissions made 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(a) of buyer's agreement executed between the parties on 03.11.2011, the possession of the subject unit was to be delivered within a period of thirty six months and 90 days grace period from the date of start of construction. The due date of possession is calculated from the date of start of construction which comes out to be 30.11.2015 as the date of start of construction is 30.11.2012. The respondent has offered the possession of the allotted unit on 19.10.2019 after obtaining occupation certificate from competent authority on 17.10.2019.

42. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate has been obtained from the competent Authority on 17.10.2019 and it has also offered the possession of the allotted unit on 19.10.2019. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 month of reasonable time is to be 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., 30.11.2015 till the date of offer of possession plus two months . The respondent-builder has already offered the possession of the allotted unit on 19.10.2019, thus delay possession charges shall be payable till offer of possession plus

two months i.e., 19.12.2019. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 03.11.2011 to hand over the possession within the stipulated period. 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., 30.11.2015 till offer of possession i.e 19.10.2019 plus two months i.e. 19.12.2019; at the 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.

43. At times, the allottee is asked to give the affidavit or indemnity-cum-undertaking in question before taking possession. The allottee has waited for long for his cherished dream home and now when it is ready for taking possession, he has either to sign the indemnity-cum-undertaking and take possession or to keep struggling with the promoter if indemnity-cum-undertaking is not signed by him. Such an undertaking/ indemnity bond given by a person thereby giving up their valuable rights must be shown to have been executed in a free atmosphere and should not give rise to any suspicion. If a slightest of doubt arises in the mind of the adjudicator that such an agreement was not executed in an atmosphere free of doubts and suspicions, the same would be deemed to be against public policy and would also amount to unfair trade practices. No reliance can be placed on any such indemnity-cum-undertaking and the same is liable to be discarded and ignored in its totality. Therefore, this authority does not place reliance on such indemnity cum undertaking. To fortify this view, the authority place reliance on the NCDRC order dated 03.01.2020 in case titled as **Capital**



**Greens Flat Buyer Association and Ors. Vs. DLF Universal Ltd., Consumer case no. 351 of 2015**, wherein it was held that the execution of indemnity-cum-undertaking would defeat the provisions of sections 23 and 28 of the Indian Contract Act, 1872 and therefore, would be against public policy, besides being an unfair trade practice.

44. Therefore, the respondent cannot force the complainants to sign the indemnity – cum undertaking before taking the offer of possession.

**F.III Direct the respondent to return Rs.1,43,300/-amount unreasonably charged in the name of other charges (which includes Rs. 1,29,140/- for electricity connection charges and Rs. 14160/- in the name of administrative charges after execution of buyer's agreement.**

45. With respect to the said relief sought by the complainant, the complainant submitted that as per Annexure-III (Schedule of Payments) of buyer's agreement, the sales consideration exclusive of ST and GST is Rs. 1,01,89,463/- (which includes the charges towards the Basic Price- Rs. 81,52,663/-, exclusive/dedicated covered car parking Rs 3,00,000, EDC & IDC Rs 7,36,801/-, Club Membership Rs 5,00,00, IFMS Rs 95,000 , PLC for Corner Rs 1,90,000/- and PLC for Mini Golf View - Rs 6,65,000) but later at the time of intimation of possession, the respondent increased it by Rs. 1,43,300/- without any reason for the same. In total, the respondent increased the sale consideration by Rs.1,43,300/ (Rs.1,29,140/- +Rs. 14,160/-). On the other hand, the respondent has denied that any amount has been added or the sale consideration has been increased by the respondent in the manner claimed by the complainants.

46. The authority observes that per schedule of payment annexed with the buyer's agreement (annexure 3, page 52 of complaint), the total sale

consideration is Rs. 1,01,89,463/- which is inclusive of basic sale price, EDC and IDC, club membership, IFMS, PLC and additional charges & excluding taxes.

47. The following provision has been made in the buyer's agreement in clause 9 in respect of the said charges which reads as under:-

**10. Electricity, Water and Sewerage Charges**

*The electricity, water and sewerage connection charges & security deposit (if any) shall be borne and paid by the Allottee(s). The Allottee(s) shall plan and distribute its electrical load in conformity with the electrical systems installed by the Company. The Allottee(S) undertakes to pay additionally to the Company on demand the actual cost of the electricity, water and sewer consumption charges and/or any other charge which may be payable in respect of the same Unit. In case of bulk supply of electrical energy, the Allottee agrees to abide by all the conditions of sanction of bulk supply and undertakes not to apply directly to Haryana Vidyut Prasaran Nigam Limited (HVPNL) or any other electricity supply company in his individual capacity for receiving any additional load of electricity other than that being provided by the Maintenance*

48. With respect to the electricity connection charges, water connection charges, sewerage connection charges, there is no doubt that all these charges are payable to various departments for obtaining service connections from the concerned departments including security deposit for sanction and release of such connections in the name of the allottee and are payable by the allottee. These connections are applied on behalf of the allottee and allottee has to make payment to the concerned department on actual basis. In case instead of paying individually for the unit if the builder has paid composite payment in respect of the abovesaid connections including security deposit

provided to the units, then the promoters will be entitled to recover the actual charges paid to the concerned department from the allottee on pro-rata basis i.e. depending upon the area of the flat allotted to the complainant viz- à-viz the total area of the particular project. The complainant/allottee will also be entitled to get proof of all such payment to the concerned department along with composite proportionate to his unit before making payment under the relevant head. In case of bulk supply of electricity, the concerned department/agency releases connection with certain terms and conditions of bulk supply and these are to be abided by the allottee. The allottee is also asked to give undertaking not to apply directly to any other electric supply company in his individual capacity for additional load of electricity other than being that provided through bulk supply arrangement. In this case, apart from bearing proportionate charges for bulk supply of electricity connection to the project, the allottee has also to bear the individual meter connection expenditure from the bulk supply point to his unit.

49. It is also clarified that there shall not be any loading or additional charges for such connection in the name of incidental charges or other miscellaneous charges.
50. Accordingly, the promoter will be entitled to recover the actual charges paid to the concerned department from the complainant 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 will also be entitled to proof of such a payment to the concerned department along with a computation proportionate

to the allotted flat, before making payment under the aforesaid head. Further administrative charges for execution of conveyance deed can be levied upto Rs. 15000/- as already fixed by DTCP. No charges shall be levied which are not part of builder buyer agreement.

**F.IV Direct the respondent from restraining in demanding lien marked fixed deposit of Rs. 2,08,136/- in favour of the respondent on the pretext of future payment of HVAT for the period of (01.04.2014 to 30.06.2017).**

51. The authority has decided this in the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.** wherein the authority has held that the promoter is entitled to charge VAT from the allottee for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT). However, the promoter cannot charge any VAT from the allottees/prospective buyers for the period 01.04.2014 to 30.06.2017 as the same was to be borne by the promoter-developer only. The respondent-promoter is bound to adjust the said amount, if charged from the allottee with the dues payable by him or refund the amount if no dues are payable by him.
52. In the present complaint, the respondent has not charged any amount towards HVAT for the period of 01.04.2014 till 30.06.2017, however, vide letter of offer of possession dated 19.10.2019 has demanded lien marked FD of Rs. 2,08,136 /- towards future liability of HVAT for liability post 01.04.2014 till 30.06.2017. In light of judgement stated above, the respondent shall not demand the same and the lien so marked be removed.

**F.V Direct the respondent to return entire amount paid as GST by complainant between 01.07.2017 to 12.04.2018.**

53. The complainants submitted that GST came into force on 01.07.2017 and the possession was supposed to be delivered by 30.11.2015. Therefore, the tax which came into existence after the due date of possession and this extra cost should not be levied on the complainants.
54. The authority has decided this issue in the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.** wherein the authority has held that for the projects where the due date of possession was prior to 01.07.2017 (date of coming into force of GST), the respondent/promoter is not entitled to charge any amount towards GST from the complainant/allottee as the liability of that charge had not become due up to the due date of possession as per the buyer's agreements.
55. In the present complaint, the possession of the subject unit was required to be delivered by 30.11.2015 and the incidence of GST came - - into operation thereafter on 01.07.2017. So, the complainants cannot be burdened to discharge a liability which had accrued solely due to respondents' own fault in delivering timely possession of the subject unit. So, the respondent/promoter is not entitled to charge GST from the complainants/allottees as the liability of GST had not become due up to the due date of possession as per the said agreement as has been held by **Haryana Real Estate Appellate Tribunal, Chandigarh in appeal bearing no. 21 of 2019** titled as **M/s Pivotal Infrastructure Pyt. Ltd. Vs. Prakash Chand Arohi.** The authority also concurs on this issue and holds that the difference between Post-GST and Pre-GST shall be borne by the promoter. The promoter is entitled to charge from the allottee the applicable combined rate of VAT and service tax fixed by the government.

**F.VI Direct the respondent to restrain from charging holding charges and maintenance charges from the complainants.**

56. **Holding charges** - The developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed. Also, holding charges shall also not be charged by the promoter at any point of time even after being part of agreement as per law settled by the Hon'ble Supreme Court in civil appeal no. 3864-3889/2020 dated 14.12. 2020. However the reasonable maintenance charges are required to be paid altogether.
57. **Maintenance Charges** - The Act mandates under section 11 (4) (d) that the developer will be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees. Clause 15 & 17 of the buyer agreement provides the clause for maintenance charges.
58. In the present case, the respondent has demanded charges towards maintenance through notice of possession letter dated 19.10.2019 on page no. 123 of the reply. The complainant allottee is required to pay the maintenance charges to the respondent in terms of obligation of complainant allottee under section 19(6) of the Act of 2016 and the same is reproduced below :

***19(6) Rights and duties of allottees***

*Every allottee , who has entered into an agreement or sale to take an apartment , plot or building as the case may be , under section 13 , shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place , the share of the registration charges , municipal*

*taxes, water and electricity charges, maintenance charges, ground rent  
, and other charges, if any.*

**F.VII Direct the respondent to pay an amount of Rs. 2, 00,000/- to the complainants as litigation cost.**

59. The complainants are 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 complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.

**G. Directions of the authority**

60. 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):
- The respondent shall pay to the complainant-allottee interest at the prescribed rate i.e. 10.75% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e.; 30.11.2015 till the date of offer of possession


(19.10.2019) plus two months i.e. 19.12.2019 as per proviso to section 18(1) of the Act read with rule 15 of the rules.


- b. The respondent is further directed to handover the possession of the subject unit on payment of outstanding dues, if any remains after adjustment of delay possession interest at the above prescribed rate.
- c. The rate of interest chargeable from the allottee 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.
- d. 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.

61. Complaint stands disposed of.

62. File be consigned to registry.

  
(Sanjeev Kumar Arora)  
Member

  
(Ashok Sangwan)  
Member

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 12.12.2023**