

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

Complaint no.	: 4656 of 2021
Complaint filed on	: 30.11.2021
First date of hearing	: 21.12.2021
Date of decision	: 14.11.2023

Ajay Chhabra (through GPA Holder Anil Kheterpal) R/o: House no. C-58, Somani Nagar North Malviya Nagar, South Delhi - 110017	Complainant
Versus	
Emaar India Ltd. (formerly known as "Emaar MGF Land Ltd.") Regd. office at: Emaar MGF Business Park, Mehrauli Gurgaon Road, Sector -28, Sikandarpur Chowk, Gurugram, Haryana.	Respondent
CORAM:	
Sh. Ashok Sangwan	Member
Sh. Sanjeev Kumar Arora	Member
APPEARANCE:	
Shri Sukhbir Yadav Advocate	Complainant
Shri Harshit Batra Advocate	Respondent

ORDER

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

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

A. Project and unit related details

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

Sr. No.	Particulars	Details
1.	Name of the project	The Palm Terraces, Sector 66, Gurugram, Haryana
2.	Rera Registration	Registered 19 of 2018 dated 01.02.2018 valid upto 30.04.2018
3.	DTCP License no.	93 of 2008 Dated 12.05.2008
4.	Validity status	11.05.2020
5.	Licensed Area	6.19 acre
6.	Name of licensee	Arjun Dev and ors.
7.	Provisional allotment issued in favor of the original allottee (M/s Gunjan Infrastructure Pvt. Ltd.)	03.05.2010 [Page 34 of reply]
8.	Unit no.	PTT-09-0601, 6 th floor, tower no. 09 [page 27 of complaint]
9.	Unit area	2100 sq. ft. [page 27 of complaint]
10.	Buyer's agreement executed between the original allottee and the respondent	01.08.2010 [page 20 of complaint]
11.	Unit was transferred from original allottee to 2 nd allottee i.e., Gajendra Singh Chowhan and anr. vide nomination letter dated	31.12.2011 [Page 87 of reply]
12.	Unit was transferred from 2 nd allottee to 3 rd allottee i.e., the complainant	31.03.2012 [Page 107 of reply]



	vide nomination letter dated	
13.	Possession clause as per buyer's agreement dated 01.08.2010	14. POSSESSION (a) Time of handing over the Possession Subject to terms of this clause and the Allottee(s) 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 upon complying with all provisions, formalities, documentation etc. as prescribed by the Developer, the Developer shall make all efforts to handover possession of the Unit (which falls within ground plus four floors tower/building) within a period of thirty (30) months from the date of commencement of construction, and for the Unit (which falls within ground plus thirteen floors tower/building) within a period of thirty six (36) months from the date of commencement of construction, subject to certain limitations as may be provided in this Agreement and timely compliance of the provisions of this Agreement by the Allottee(s). The Allottee(s) agrees and understands that the Developer shall be entitled to a grace period of three (3) months, for applying and obtaining the occupation certificate in respect of the Unit and/or the Project. (Emphasis supplied) [Page 39 of complaint]
14.	Date of start of construction as per statement of account dated 16.12.2021	24.06.2011 (Page 207 of reply)
15.	Due date of possession	24.06.2014
16.	Total consideration as per statement of account dated 16.12.2021	Rs.1,22,23,095/- (Page 207 of reply)

17.	Total amount paid by the complainants as per statement of account dated 16.12.2021	Rs.1,23,02,508/- (Page 208 of reply)
18.	Occupation certificate	08.08.2019 (Page 141 of reply)
19.	Offer of possession	13.08.2019 [Page 143 of reply]
20.	Unit handover letter dated	06.02.2020 [Page 153 of reply]
21.	Conveyance deed executed on	10.07.2020 [Page 158 of reply]
22.	Delay compensation already paid by the respondent in terms of the buyer's agreement as per statement of account dated 16.12.2021	Rs.6,47,951/- (Page 208 of reply)

B. Facts of the complaint सत्यमेव जयते

The complainant made the following submissions in the complaint:

3. That on 31.03.2010, M/s Gunjan Infrastructure Pvt. Ltd. (Original Allottee) booked an apartment bearing flat No. PTT-09-06091 on 6th Floor in Tower 9 admeasuring 2100 sq. ft. in the project 'Palm Terraces', situated in Sector - 66, Gurugram by making a payment of Rs. 2,00,000/- as booking amount. The total sale consideration of the unit was Rs 1,16,41,800/- including basic sale price, covered parking charges, development charges and IFMS, etc.
4. That on 01.08.2010, a builder buyer agreement was executed inter-se the respondent and the original allottee. As per clause 14(a) of the said agreement, the respondent has to give possession of the said flat within 30 months from the date of commencement of construction of the unit (which falls within ground plus thirteen floors). It is germane to mention

- here that that the construction was commenced on 24.06.2011, therefore, the due date of possession was 24.12.2013.
5. That Mr. Gajendra Singh Chowhan & Pia Chowhan purchased the said flat from the original allottee. (first subsequent allottees) Therefore, the respondent duly endorsed all the onward rights and liabilities in favour of the first subsequent allottees vide application dated 31.08.2010.
 6. That thereafter vide application dated 19.03.2012, Mr. Ajay Chhabra purchased the above said flat from Mr. Gajendra Singh Chowhan & Pia Chowhan. (first subsequent allottees) Therefore, on 31.03.2012, the respondent sent a nomination letter in favour of Ajay Chhabra (complainant/second subsequent allottee) with respect to the unit in question and transferred all onward rights in favour of Ajay Chhabra (second subsequent allottee).
 7. That on 13.08.2019, respondent issued a letter of offer of possession to the complainant stating that the occupation certificate with respect to unit in question has been received and the unit is ready for possession. However, it is pertinent to mention here that the respondent acknowledged the delay in possession by crediting the delay compensation of Rs. 6,47,951/- to complainant's account.
 8. That as per the statement of account issued by the respondent dated 26.12.2019, the complainant has paid Rs. 1,26,77,724/-, i.e., more than 100% of the total sale consideration. It is pertinent to mention here that the statement of account shows an excess/credit balance of Rs. 4,25,220/-.
 9. That the complainant does not want to withdraw from the project. Therefore, on 06.02.2020, the complainant has taken physical

possession of the flat, and thereafter on 10.07.2020, the respondent has executed conveyance deed in favour of the complainant.

10. That the complainant has paid preferential location charges (PLC) of Rs. 6,30,000/- for green facing, but there is no green facing from the balcony of the flat. On contrary, there are fields and buffalo daily adjoining the project.
11. That on 17.11.2021, the complainant obtained a statement of account from the respondent, which shows that the respondent has refunded Rs. 7,43,610/- to the complainants and showing an excess/credit balance of Rs. 4/-.
12. That the offer of possession contains illegal/unreasonable demands under different heads, i.e., electrification charges amounting to Rs. 88,316/-, lien marked FD for VAT amounting to Rs. 1,86,380/-, etc.
13. That there exists deficiency in services on the part of the respondent promoter. The complainant and his GPA holder approached the respondent for the refund of PLC and delay possession charges. The office bearers of the respondent promised to refund the same after execution of conveyance deed. However, nothing was done by the respondent in this regard.

C. Relief sought by the complainants

14. The complainant is seeking the following relief:
 - i. Direct the respondent to pay interest at prescribed rate, towards delay in handing over the possession of the property in question as per provisions of The Real Estate (Regulation and Development) Act, 2016 and Haryana Real Estate (Regulation and Development) Rules, 2017.

- ii. Direct the respondent to refund the PLC with interest.
- iii. Direct the respondent to refrain from giving effect to unfair clauses unilaterally incorporated in the Apartment Buyer Agreement.

D. Reply filed by the Respondent

The respondent had contested the complaint on the following grounds:

15. That there subsists no cause of action to file this complaint against the respondent since the execution of the conveyance deed marks the termination of the contractual relationship between the parties.
16. That the complainant is not an allottee but an investor who has booked the unit in question as a speculative investment in order to earn rental income/profit from its resale and not for the purpose of self-use as his residence.
17. That the unit in question was originally allotted to M/s Gunjan Infrastructure Pvt. Ltd. (original allottee) vide the provisional allotment letter dated 03.05.2010. Thereafter, a builder buyer agreement was executed between the original allottee and the respondent on 01.08.2010.
18. That thereafter, the unit was transferred to the first subsequent allottees, namely, Mr. Gajendra Singh Chowhan and Mrs Pia Chowhan vide nomination letter dated 31.12.2011.
19. That thereafter, the 1st subsequent allottees transferred the said unit to the complainant/second subsequent allottee, after executing an agreement to sell dated 25.02.2012. Thereafter, indemnity-cum-undertaking was executed between the complainant and respondent on 27.02.2012, which is to be read along with the builder buyer agreement.

The nomination of the complainant was confirmed vide the nomination letter dated 31.03.2012.

20. That the relationship between the parties is contractual in nature and is governed by the builder buyer agreement and mutual understanding between the Parties. The complainant/second subsequent allottee was aware of the delay in the project at the time of nomination/endorsement. Acceptance of same without any protest, amounts to acceptance of the prevalent circumstances and thus, he cannot be allowed to take benefit of his own wrong. Hence, the Complaint is liable to be dismissed. The Hon'ble Supreme Court has held in **Laureate Buildwell Pvt. Ltd vs. Charanjeet Singh 2021 SCC Online SC 479** that:

31...The nature and extent of relief, to which a subsequent purchaser can be entitled to, would be fact dependent. However, it cannot be said that a subsequent purchaser who steps into the shoes of an original allottees of a housing project in which the builder has not honored its commitment to deliver the flat within a stipulated time, cannot expect any - even reasonable time, for the performance of the builder's obligation. Such a conclusion would be arbitrary, given that there may be a large number-possibly thousands of flat buyers, waiting for their promised flats or residences; they surely would be entitled to all reliefs under the Act. In such case, a purchaser who no doubt enters the picture later surely belongs to the same class. **Further, the purchaser agrees to buy the flat with a reasonable expectation that delivery of possession would be in accordance within the bounds of the delayed timeline that he has knowledge of, at the time of purchase of the flat.**

21. That as per the clause 14(a) of the Buyer's Agreement, the respondent shall handover possession of the unit within 30 months from the date of commencement of construction along with the grace period of 3 months, i.e., by 24.03.2014. However, the same was made subject to limitations provided in the builder buyer agreement and hence not absolute. That the said date is subject to clause 14(b) of the agreement including timely

payments by the allottee and other circumstances beyond the control of the respondent.

22. That the respondent was adversely affected by various construction bans, lack of availability of building material, regulation of the construction and development activities by the judicial authorities, including NGT in NCR on account of the environmental conditions, restrictions on usage of ground water by the High Court of Punjab & Haryana, etc. and other force majeure circumstances, yet, the respondent completed the construction of the project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the complainant and demanding the prices only as and when the construction was being done.
23. That the complainant constantly defaulted in making payments. These defaults are evident from the delayed payment charges paid by the complainant at various occasions and the numerous reminders and demand notes serviced to him as under -

S.N.	Particulars	Reference no.	Dated
2010			
1.	Reminder 1	REMINDER1/708581	23.07.2010
2.	Reminder 2	REMINDER2/708581	11.08.2010
2011			
3.	Payment Request Letter	PTT/708581-PR-030/20110502174745754	02.06.2011
2012			
4.	Payment Request Letter	PTT/078581-PR-040/20120217132926085	17.02.2012



5.	Payment Request Letter	PTT/708581-PR-050/20120416155756742	16.04.2012
2013			
6.	Payment Request Letter	PTT/708581-PR-060/20130322144110938	22.03.2013
7.	Payment Reminder 1	REMINDER1/708581	15.04.2013
8.	Payment Reminder 2	REMINDER2/708581	01.05.2013
9.	Payment Request Letter	PTT/708581-PR-070/20130917174856805	17.09.2013
2014			
10.	Payment Request Letter	PTT/708581-PR-080/20140408195229545	08.04.2014
11.	Payment Request Letter	PTT/708581-PR-090/20140917151603544	17.09.2014
12.	Payment Request Letter - Duplicate	PTT/708581-PR-090/20140924182934169	24.09.2014
2017			
13.	Payment Request Letter	Payment Request Letter	07.02.2017
14.	Payment Request Reminder 1	REMINDER1/708581	17.03.2017
15.	Payment Request Reminder 2	REMINDER2/708581	02.04.2017
16.	HVAT Payment Request Letter	PTT/708581	06.06.2017
17.	Payment Request Reminder 1	REMINDER1/708581	08.10.2017

24. That the respondent had preferred a SLP No. 2628 of 2021 against an allottee of the similar project challenging the similar issues raised in the common impugned order passed in the writs filed by the respondent challenging the legalities and vires of the Act and its existing rules. Further, the Hon'ble Supreme Court granted a stay dated 26.02.2021 on

- the operation of the common judgement/ order passed by the Hon'ble Punjab and Haryana High court in CWP no. 38144/2018 and all the corresponding execution proceedings pending before HRERA Authority.
25. That all these circumstances come within the purview of the force majeure clause and hence allow a reasonable time to the respondent. The respondent had the right to suspend the construction of the project upon happening of circumstances beyond their control, however, despite all the hardships, the respondent did not suspend the construction and managed to keep the project afloat through all the adversities.
26. That the respondent completed the construction of the project and applied for occupation certificate dated 30.06.2017 before the concerned Authority and successfully attained it on 08.03.2019. Thereafter, the complainant was offered the possession of the unit on 13.08.2019.
27. That thereafter, the complainant executed an indemnity-cum-undertaking for possession dated 30.09.2019 and thereafter took the possession of the unit vide the Unit handover letter dated 06.02.2020. It is important to note that the Complainant had satisfied himself with respect of the development in the unit and the project and it was only after being completely satisfied that the possession was taken by the complainant, as is evident from the Unit handover letter, relevant part of which is reproduced as under:

"...Allottee, hereby, certifies that he/she has taken over the peaceful and vacant physical possession of the aforesaid unit after fully satisfying himself/ herself with regard to its measurements, location, dimension and development etc. ...".

28. Subsequently, the absolute title over the unit got transferred to the complainant vide conveyance deed dated 10.07.2020. The complainant is in the peaceful possession of the unit and having enjoyed such possession since then should not be entitled to claim the interest on the delayed possession as there exist no subsisting relationship between the parties and the liabilities and obligations of the respondent as enumerated in the allotment letter/agreement stand satisfied
29. That the respondent had already credited Rs. 6,47,951/- as compensation at the time of offer of possession. Moreover, the bonafide conduct of the respondent should be seen as evident from the credit memo of Rs. 4,96,659/- issued as against early payment rebate on 13.08.2019. Without prejudice to the rights of the respondent, delay interest, if any has to be calculated only on the amounts deposited by the allottee/complainant towards the basic principle amount of the unit in question and not on any amount credited by the respondent, or any payment made by the allottees/complainants towards delay payment charges (DPC) or any taxes/statutory payments etc.
30. That an amount of Rs. 50,000/- for e-challan is due and payable by the complainant. The complainant has intentionally refrained from remitting the aforesaid amount to the respondent.

E. Jurisdiction of the authority

31. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

E. I Territorial jurisdiction

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

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

Section 11

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

Section 34-Functions of the Authority:

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

33. So, in view of the provisions of the Act quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondent

F.I. Whether signing of unit hand over letter or indemnity-cum-undertaking at the time of possession extinguishes the right of the allottee to claim delay possession charges is valid ?

34. The respondent contended that at the time of taking possession of the subject unit vide unit hand over letter dated 06.02.2020, the complainant had certified himself to be fully satisfied with regard to the measurements, location, direction, developments et cetera of the unit and also admitted and acknowledge that he does not have any claim of any nature whatsoever against the respondent and that upon acceptance of possession, the liabilities and obligations of the respondent as enumerated in the allotment letter/buyer's agreement, stand fully satisfied. The relevant para of the unit handover letter relied upon reads as under:

"The Allottee, hereby, certifies that he / she has taken over the peaceful and vacant physical possession of the aforesaid Unit after fully satisfying himself / herself with regard to its measurements, location, dimension and development etc. and hereafter the Allottee has no claim of any nature whatsoever against the Company with regard to the size, dimension, area, location and legal status of the aforesaid Home.

Upon acceptance of possession, the liabilities and obligations of the Company as enumerated in the allotment letter/Agreement executed in favour of the Allottee stand satisfied."

35. In the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.,** the Authority has comprehensively dealt with this issue and has held that the unit handover letter and indemnity cum undertaking executed at the time of taking possession, does not preclude the allottees from exercising their right to claim delay possession charges as per the provisions of the Act.

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

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

37. In the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.**, the authority has comprehensively dealt with this issue and has held that taking over the possession and thereafter execution of the conveyance deed can best be termed as respondent having discharged its liabilities as per the buyer's agreement and upon taking possession, and/or executing conveyance deed, the complainant never gave up their statutory right to seek delayed possession charges as per the provisions of the said Act. Also, the same view has been upheld by the Hon'ble Supreme Court in case titled as **Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd. (now Known as BEGUR OMR Homes Pvt. Ltd.) and Ors. (Civil appeal no. 6239 of 2019)** dated **24.08.2020**, the relevant paras are reproduced herein below:

"34 The developer has not disputed these communications. Though these are four communications issued by the developer, the appellants submitted that they are not isolated aberrations but fit into a pattern. The developer does not state that it was willing to offer the flat purchasers possession of their flats and the right to execute conveyance of the flats while reserving their claim for compensation for delay. On the contrary, the tenor of the communications indicates that while executing the Deeds of Conveyance, the flat buyers were informed that no form of protest or reservation would be acceptable. The flat buyers were essentially presented with an unfair choice of either retaining their right to pursue their claims (in which event they would not get possession or title in the meantime) or to forsake the claims in order to perfect their title to the flats for which they had paid valuable consideration. In this backdrop, the simple question which we need to address is whether a flat buyer who seeks to espouse

a claim against the developer for delayed possession can as a consequence of doing so be compelled to defer the right to obtain a conveyance to perfect their title. It would, in our view, be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, the purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance to forsake the right to claim compensation. This basically is a position which the NCDRC has espoused. We cannot countenance that view.

35. *The flat purchasers invested hard earned money. It is only reasonable to presume that the next logical step is for the purchaser to perfect the title to the premises which have been allotted under the terms of the ABA. But the submission of the developer is that the purchaser forsakes the remedy before the consumer forum by seeking a Deed of Conveyance. To accept such a construction would lead to an absurd consequence of requiring the purchaser either to abandon a just claim as a condition for obtaining the conveyance or to indefinitely delay the execution of the Deed of Conveyance pending protracted consumer litigation."*

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

G. Findings on the reliefs sought by the complainant

G.I. Direct the respondent to pay interest at prescribed rate, towards delay in handing over the possession of the property in question as per provisions of The Real Estate (Regulation and Development) Act, 2016 and Haryana Real Estate (Regulation and Development) Rules, 2017.

39. In the present complaint, the complainants are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

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

"14. POSSESSION

(a) Time of handing over the Possession

"Subject to terms of this clause and the Allottee(s) 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 Developer, the Developer proposes to hand over the possession of the Unit within 24 months from the start of construction. The Allottee(s) agrees and understands that the developer shall be entitled to a grace period of 6 months, for applying and obtaining the occupation certificate in respect of the Complex."

41. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favor of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment time period for handing

over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject floor and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

42. **Due date of possession and admissibility of grace period:** As per Clause 14(a) of the builder buyer agreement dated 01.08.2010, the promoter has proposed to hand over the possession of the said unit within 36 months from the date of commencement of construction (for the unit which falls within ground plus thirteen floors tower/building) and promoter shall be further entitled to a grace period of six months for applying and obtaining occupation certificate in respect of said floor. The construction commenced on 24.06.2011 as per statement of account dated 16.12.2021. The period of 36 months expired on 24.06.2014. 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 six months cannot be allowed to the promoter at this stage. Therefore, the due date of possession comes out to be 24.06.2014.
43. **Admissibility of delay possession charges at prescribed rate of interest:** The proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the

promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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

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

44. 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.
45. 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., 14.11.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
46. **Rate of interest to be paid by complainant/allottee for delay in making payments:** The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

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

Explanation. —For the purpose of this clause—

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

47. **Therefore**, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.75% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
48. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 14(a) of the buyer's agreement executed between the parties on 01.08.2010, the possession of the said unit was to be delivered within a period of 36 months from the date of commencement of construction and it is further provided in agreement that promoter shall be entitled to a grace period of three months for applying and obtaining completion certificate/occupation certificate in respect of said floor. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 24.06.2014. In the present case, the complainant was offered possession by the respondent on 13.08.2019 after obtaining occupation certificate dated 08.08.2019 from the competent authority. The authority is of the considered view that there is delay on the part of the respondent to offer physical

possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 01.08.2010 executed between the parties.

49. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 08.08.2019. However, the respondent offered the possession of the unit in question to the complainant only on 13.08.2019, 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 offer of possession, i.e., 24.06.2014 till the expiry of 2 months from the date of offer of possession (13.08.2019) which comes out to be 13.10.2019. Also, the complainants are directed to take possession of the unit in question within 2 months from the date of this order as per section 19(10) of the Act after clearing outstanding dues, if any.
50. 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., 24.06.2014 till 13.10.2019 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

51. Also, the amount of compensation already paid by the respondent to the complainant towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.

G. II. Direct the respondent to refund the PLC with interest.

52. Clause 1.2(d) of builder buyer agreement dated 01.08.2010 provides that an amount of Rs. 6,30,000/- is paid by the complainant towards PLC on account of unit being golf range facing. The relevant part of same is reproduced as under-

"1.2(d). (ii) The Total Consideration for preferentially located Unit includes the preferential location charges, Golf Range Facing of Rupees 630000/- (@Rs.300/- per sq. ft), and if due to change in layout plan, design /architecture plan etc., the location of any Unit, whether preferentially located or otherwise is changed to any other preferential location where the PLC are higher than the rate as mentioned hereinabove, then in such a case the Allottee shall be liable to pay the PLC as per the revised PLC decided by the Developer within thirty (30) days of any such communication received by the Allottee in this regard. However, if due to the change in the layout plan the Unit ceases to be preferentially located, then in such an event the Developer shall be liable to refund only the amount of preferential location charges paid by the Allottee without any interest and/or compensation and/or damages and/or costs of any nature whatsoever and such refund shall be adjusted in the last payable installment for the Unit."

53. The Authority taking cognizance in the matter appointed Mr. Sumeet Nain, Engineer Executive as local commissioner (LC) vide Authority memo C.No. HARERA/GGM/CR/4656/2021 dated 01.10.2022 to visit the project site with respect to unit in question to confirm the availability of green area for which respondent had charged PLC

charges. Accordingly, the LC visited the project site on 03.11.2022 and concluded that the unit is not preferentially located as per Clause 1.2(d)(ii) of builder buyer agreement for which PLC is charged by respondent promoter. The relevant part of LC report is reproduced as under-

"5. The site of project named "Palm Terraces Select" being developed by M/s Emaar MGF Land Limited in sector-66, Gurugram has been inspected on 07.11.2022 to check the status of complainant unit regarding preferential location and it is concluded that:

A. As per clause 1.2(d)(ii) of BBA PLC is charged for Golf Range facing of the units. The complainant unit has been inspected to check the preferential location of unit for which PLC has been charged and it is submitted that no Golf Range is visible from the balcony of the unit as the same is not available. Further, as per approved site plan no Golf Range exists in the project

B. Therefore, it is confirmed that the complainant unit is not preferentially located for which PLC has been charged by the promoter as per BBA."

54. The factual matrix of the case is that the unit was transferred in favour of complainant/second subsequent allottee on 31.03.2012. The due date of handing over possession was 24.06.2014. Occupation certificate was obtained by the respondent on 08.08.2019. Thereafter, offer of possession to complainant was made on 13.08.2019. Unit was handed over to complainant on 06.02.2020 and later, on 10.07.2020, conveyance deed was duly executed between both the parties. Complainant thereafter approached the Authority on 30.11.2021 by filing this present complaint. Though the LC report concludes that the unit in question is not preferentially located, the Authority is of the view that no refund of PLC can be allowed at this stage when physical possession had been taken post inspection, on execution of conveyance deed between the parties. The right of complainant to claim PLC ended

on execution of conveyance deed, as is evident from the clauses of conveyance deed entered into between the parties, which are reproduced as under-

"K. The Vendee has carried out the inspection of the Said Land, Licenses with details of ownership of the Said Land, building plans, Occupation Certificate and other documents relating to the title, competency & all other relevant details to the satisfaction of the Vendee accepts and confirms that the Vendors have furnished all requisite information, clarification and explanations as required by Vendee to its complete satisfaction;

M. The Vendee confirms that the Vendee has verified the description or physical condition of the Said Building / Said Complex / Apartment and/ or the size, dimensions, etc. of the said Apartment or any other physical characteristics thereof, the services to be provided by the Vendors, the estimated facilities/ amenities to be made available to the Vendee or any other data except as specifically contained in this Deed and that the Vendee has solely relied on his / her own judgment and investigation in this regard before deciding and/or agreeing to execute this Deed. The Vendee further confirms that no oral or written representations or statements made by any Party shall be valid or shall be considered to be part of this deed, as this Deed being self-contained and complete in itself in all respects, and as such the vendors and the vendee have desired to transfer the title of the said apartment in favour of the Vendor on the terms and conditions contained herein;

11. That the actual, physical, vacant possession of the said Apartment has been handed over to the Vendee and the Vendee hereby confirms taking over possession of the said Apartment/ parking space(s) from the Vendors after satisfying himself/ herself that the construction as also the various installations like electrification work, sanitary fittings, water and sewerage connection etc. have been made and provided in accordance with the drawings, designs and specifications as agreed and are in good order and condition and that the Vendee is fully satisfied in this regard and has no complaint or claim in respect of the area of the said Apartment, any item of work, material, quality of work, installation, compensation for delay, if any, with respect to the said Apartment, etc., therein."

55. Since there exist no documentary evidence as to the fact that complainant raised any objection as to the unit in question not being preferentially located; the Authority is of the view that no relief of refund of PLC can be granted to complainant here in light of factual matrix of the present case.

G.III. Direct the respondent to refrain from giving effect to unfair clauses unilaterally incorporated in the Apartment Buyer Agreement.

56. The complainants have not specified any particular unfair clause of the shop buyer's agreement. So, the authority is unable to deliberate upon this relief. The respondent is directed not to charge anything which is not part of space buyer's agreement.

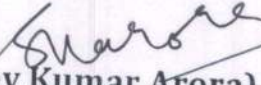
H. Directions of the Authority

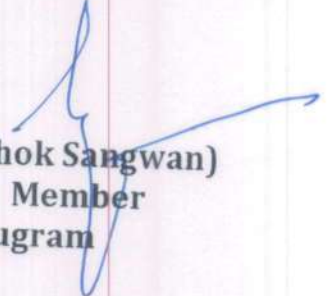
57. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to pay the interest at the prescribed rate, i.e., 10.75 % per annum for every month of delay on the amount paid by the complainant from the due date of handing over the possession of the unit, i.e., 24.06.2014 till 13.10.2019, i.e., after expiry of 2 months from the date of offer of possession (13.08.2019). 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.
- ii. Also, the amount of compensation already paid by the respondent to the complainant towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.

58. Complaint stands disposed of.

59. File be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.11.2023



HARERA
GURUGRAM