



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

Complaint no. : 4528 of 2022
Order pronounced on : 13.03.2024

Emaar India Ltd.

Address: 306-308, Square One, C-2,
District Centre, Saket, New Delhi-110017.

Complainant

Versus

Manish Dawar

Address: D-502, Lagoon Apartments, Ambience
Island, Nh-8, Gurugram-122010.

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE

Shri Harshit Batra (Advocate)

Complainant

Shri Satish Rai (Advocate)

Respondent

ORDER

1. The present complaint has been filed by the complainant/promoter 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 19(10) of the Act wherein it is inter alia prescribed that the allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said unit. Also, the obligation of allottee to make necessary payments in the manner and within time as



specified in the agreement for sale under section 19(6) and to pay interest, at such rate as may be prescribed, for any delay in payments as per section 19(7) of the Act.

A. Project and unit related details

2. The particulars of the project, the details of sale consideration, the amount paid by the respondents, 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	"Emerald Plaza Offices at Emerald Hills" at Sector-65, Urban Estate, Gurugram, Haryana.
2.	Nature of project	Commercial complex
3.	RERA registered	Not registered
4.	DTCP license	Licence no. 10 of 2009 Dated 21.05.2009
5.	Unit no.	EPO-08-018, 8 th Floor (As on page 31 of complaint)
6.	Unit area	527.16sq.ft.(super area) (As on page 31 of complaint)
7.	Date of execution of buyer's agreement	16.11.2010 (As on page 30 of complaint)
8.	Possession clause	16. POSSESSION (a) Time of handing over the Possession <i>(i) That the possession of the Office Spaces in the Commercial Complex shall be delivered and handed over to the</i>



		<p><i>Allottee(s) within thirty (30) months of the execution hereof, subject however to the Allottee(s) having strict complied with all the terms and conditions of this Agreement and not being in default under any provisions of this Agreement and all amounts due and payable by the Allottee(s) under this Agreement having been paid in time to the Company. The Company shall give notice to the Allottee(s) offering in writing to the Allottee to take possession of the Office Spaces for his occupation and use("Notice of Possession").</i></p> <p><i>(ii) The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of one hundred and twenty (120) days over and above the period more particularly specified here in above in sub clause(a) of clause 16 and clause 16 for applying and obtaining necessary approvals in respect of the Commercial Complex.</i></p> <p><i>(Emphasis supplied)</i></p> <p><i>(As on page 38 of complaint)</i></p>
9.	Due date of possession	15.05.2013 (calculated 30 months from date of execution of agreement)
10.	Total sales consideration	Rs.44,86,178/- (As on page 66 of complaint)
11.	Amount paid	Rs.41,98,343/- (as on page 98 of complaint)
12.	Occupation certificate	08.01.2018 (As per the site of DTCP)
13.	Letter of offer of possession	24.01.2018 (As on page 92 of complaint)
14.	Reminder for taking possession	01.11.2019

(As on page 102 of complaint)

B. Facts of the complaint

3. The complainant/promoter has made following submissions in the complaint:
- I. That the complainant was formerly known under the name and style of M/s Emaar MGF Land Ltd., however, had changed its name to "Emaar India Limited" w.e.f. 07.10.2020 as is evident from the certificate issued by the Government of India, Ministry of Corporate Affairs, New Delhi and got incorporated under the Companies Act, 1956. That the present complaint is filed by Mr. Sayantan Mondal, Authorized Representative of the complainant who is duly authorized to act on behalf of the complainant vide board resolution dated 10.11.2021.
 - II. That Licence no. 10 of 2009 dated 21.05.2009 for development of a multi storied commercial complex was granted to the complainant by the Director, Town & country Planning, Govt. of Haryana upon which the complainant devised the development of the project under the name and style "Emerald Plaza Offices at Emerald Hills" at Sector 65, Urban Estate, Haryana.
 - III. That it is pertinent to highlight that the project has been duly completed after obtaining all the necessary approvals and fulfilling all the requirements as per the existing bye-laws. That the complainant builder has ensured due compliance under the rules, regulations of the concerned laws. That after having completed the construction of the project, the occupancy certificate for the project was issued on



08.01.2018. It is to be noted that the majority of booked office spaces units have been handed over to respective allottees.

- IV. That the respondent approached the complainant expressing an intention of booking a unit in the project and willingness to pay for the same through application dated 29.06.2010, upon which a provisional allotment dated 25.08.2010 was made in the name of the allottee. That thereafter, a Buyer's Agreement dated 16.11.2010 was executed between the complainant and the allottee .
- V. That the respondent agreed to pay the amount against the unit through construction-linked plan as enumerated in the BBA. However, respondent had defaulted in the payment since the very beginning. Upon the default of the respondent, he was served with reminder for payment, as per the terms and conditions of the agreement. It is due to the delay in making the payments against the unit that the respondent is liable to pay Rs. 91,344/- as per calculation sheet as delayed payment charges. The complainant issued a number of payment request letters and reminders to ensure timely payments for the timely construction of the project. A record of the same is noted below:

S.NO	PARTCULARS	Ref. No.	Dated
2018			
1.	Payment Request Reminder 2	REMINDER2/710653	13.01.2018
2017			
2.	Payment Request Reminder 1	REMINDER1/710653	12.10.2017



3.	Payment Request Letter	EPO/710653-PR-0/20170712210414744	12.07.2017
4.	HVAT Payment Request Letter	EPO/710653	02.06.2017
5.	Payment Request Letter	EPO/710653-PR-0/20170419194237246	19.04.2017
2013			
6.	Payment Request Letter	EPO/710653-PR-0/20131018102639423	18.10.2013
7.	Payment Request Letter	EPO/10653-PR-0/20130905150608834	05.09.2013
8.	Payment Request Letter	EPO/710653-PR-090/20130604132848023	04.06.2013
9.	Payment Request Reminder 1	REMINDER1/710653	26.04.2013
10.	Payment Request Letter	EPO/710653-PR-080/20130403184810646	03.04.2013
11.	Payment Request Letter	EPO/10653-PR-070/20130215174603737	15.02.2013
2012			
12.	Payment Request Letter	EPO/710653-PR-060/20121025180245024	25.10.2012
13.	Payment Request Letter	EPO/710653-PR-050/20120828185127062	28.08.2012
14.	Payment Request Letter	EPO/710653-PR-040/20120525132139792	25.05.2012
2011			



15.	Payment Request for Service Tax on past payments	EPO/710653/2011050611 5259484	06.05.2011
2010			
16.	Payment Request Letter	EPO/710653-PR-030	25.11.2010
17.	Payment Request Letter	EPO/710653-PR-020	02.11.2010

- VI. That the continuous defaults, from the very beginning, on part of the respondent prima facie show the wilfulness in causing the defaults. The construction of the project was completed to the extent of being habitable and the occupancy certificate has been received on 08.01.2018 after which, the complainant had lawfully offered the valid legal possession on 24.01.2018 which the respondent has failed to take, till date.
- VII. That moreover, no delay has been caused by the complainant. That the time for handing of the possession was proposed to be 30 months from the date of execution of the Agreement and 120 days grace period, as per clause 16(a) of the Agreement, and was

"...subject however to the Allottee(s) having complied with all the terms and conditions of this Agreement and not being in default under any provisions of this Agreement and all amounts due and payable by the Allottee under this Agreement having been paid in time to the company..."

- VIII. It must be brought to light that the complainant 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 groundwater by



the High Court of Punjab & Haryana, etc. and other force majeure circumstances, yet the complainant completed the construction of the project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the respondent and demanding the prices only as and when the construction was being done.

- IX. That moreover, vide order dated 13.09.2012, the Hon'ble High Court of Punjab and Haryana in *CWP No. 20032 of 2008 titled as Sunil Singh v/s MoEF & others vide orders dated 16.07.2012* directed that no building plans for construction shall be sanctioned unless the applicant assures the authority that carrying out the construction underground water will not be used and also show all the sources from where the water supply will be taken for construction purposes. The period of prohibition was till 12.10.2012. It was due to the ban on the usage of underground water, that the construction activity was brought to a standstill as there were no arrangements by the State government to fulfil the demand of water to be used in construction activity.
- X. That it needs to be categorically noted that in *Shuchi Sur v Venetian LDF Projects LLP 3890 of 2021*, under similar circumstances beyond the control of the complainant builder, as occurring before the proposed due date of delivery of possession, were noted to be valid grounds to entitle the builder with the grace period and hence, the same should be done in the present case.
- XI. That additionally, it needs to be categorically noted that it was the obligation of the respondent-allottee to make the due payments under the Agreement and in case of default of the same, the proposed



timeline for delivery of possession is bound to be increased as under Clause 16(b)(vi), which is reiterated as under:

"16(b)(vi). That the Allottee(s) agrees and accepts that in case of any default/delay in payment as per Annexure II, the date of handing over of the possession shall be extended accordingly solely on the Company's discretion till the payment of all outstanding amounts to the satisfaction of the Company"

XII. That it is a matter of fact and law that it is the obligation of the respondent under the Act to make the due payments as agreed to take possession of the allotment within two months of occupancy certificate and thereafter to execute the conveyance deed. The respondent has a corresponding obligation as per the Agreement to make the due payments against the unit, to take possession within 30 days of the letter of offer of possession, and to have the sale deed executed upon full payments being made. The relevant provisions of the Agreement are reiterated hereinbelow:

"Clause 22 Events of default and consequences

22.1 It is specifically made clear to the Allottee that the Allottee shall perform, comply, abide by and adhere to all covenants and obligations required to be performed or complied with under this Agreement. Any default, breach or non-compliance of any of the terms and conditions of this Agreement shall be deemed to be an event of default liable for consequences stipulated therein. The following are the events of default which include but are not limited to the following:

(a) Failure to perform and observe any or all of the Allottee(s) obligation as set forth in this Agreement or to perform any other occupancy obligation, if any, set forth in this or any other related Agreement.

(b) Failure to make the payment as per Schedule of Payment annexed hereto as Annexure - II.

(c) Failure to take over the Office Space for occupation and use within the time specified by the company.

(d) Failure to execute the Conveyance/ Sale Deed within the time stipulated by the Company or relevant authorities.

...



- XIII. That the defaulting conduct of the respondent is not new and accounts for its *malafide* intentions towards the non-payment of the unit in the project. It must be noted that the respondent is bound by the Agreement which has been executed between the complainant and the respondent. The respondent cannot be allowed to wriggle out from its responsibilities due to any reason whatsoever. It is categorical to note that upon the non-payment of dues by the respondent allottee, the respondent is liable to pay the delayed payment charges and interests.
- XIV. That accordingly, as on date, out of the total demand of Rs. 46,63,655 a sum of Rs. 4,10,955/- is pending to be paid by the respondent allottee which also includes the delayed payment interest charged @9.3% p.a. upon non-payment. It is further submitted that apart from the above mentioned charge, CAM charges, Holding Charges, Stamp duty for the execution of conveyance deed, E- Challan, HVAT are also pending to be paid by the respondent a bifurcation of which has been noted hereunder:

S.No.	Particular	Amount
1.	Balance amount	Rs. 3,19,611/-
2.	Delayed payment charges	Rs. 91,344/-
3.	CAM charges	Rs. 3,60,545/-
4.	Holding Charges	Rs. 15,98,863/-
5.	Stamp Duty	Rs. 2,81,260/-
6.	E-Challan	Rs. 25000/-



7.	H-vat Security	Rs. 10,878/-
	Total Amount	Rs. 26,87,501/-

- XV. That the complainant has complied with all of its obligations, not only with respect to the Agreement with the complainant but also as per the concerned laws, rules and regulations thereunder and the local authorities. However, the respondent has continued its *malafide* practices.
- XVI. That the defaulting conduct of the respondent is not new and accounts for his *malafide* intentions towards the non-payment. It must be noted that the respondent is bound by the Agreement which has been executed between the complainant and the respondent and thus, he cannot be allowed to wriggle out from his responsibilities due to any fluctuations in the market or any other reason whatsoever. Moreover, the possession has not been taken by the respondent allottee. Multiple reminders were sent to the respondent for taking possession and to clear the outstanding dues to facilitate the possession.
- XVII. In addition to these reminder letters, several emails have also been written to the respondent from 2018 - 2019. The acts and conduct of the respondent allottee are violative of the terms and conditions of the Agreement and the respondent allottee are liable to make the payment against the unit and take the possession. That this is in line with the holding of the Hon'ble Supreme Court in *Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna and Ors.*, wherein occupancy certificate had been issues for Phase 1 of the project and consequently, the developer had offered the possession to the



respective allottees. The Supreme Court directed such allottees to take possession of their respective allotments.

XVIII. Additionally, in a recent case of *Emaar India Limited v Ghyanshyam Bhardwaj 3900 of 2021*, Haryana RERA, Gurugram bench, the Authority had directed the allottee to take the possession after making the due payments against the unit along with prescribed interest @ 9.3% p.a..

XIX. That in the interest of equity, justice and fair play, it must be noted that the complainant has always tuned to its obligations and has waited for an inordinate period of time for clearing of dues and taking of possession by the respondent. Hence, the complainant cannot be made to wait for a longer period of time and the respondent should be bound to adhere as under the law.

C. Relief sought by the complainant/promoter

4. The complainant has filed the present complaint for seeking following reliefs:

- i. Direct the respondent to pay the outstanding dues of Rs.3,19,611/.
- ii. Direct the respondent to take possession of the unit and get conveyance deed registered.
- iii. Direct the respondent to pay the interest @ MCLR plus 2% on the pending payments as per the payment plan.
- iv. Direct the respondent to actively participate in the execution and registration of conveyance deed.



- v. Direct the respondent to clear the CAM charges of Rs.3,60,545/-.
 - vi. Grant any other relief as the authority deems fit in the peculiar facts and circumstances of the present complaint.
5. On the date of hearing, the authority explained to the respondents/allottees about the contravention as alleged to have been committed in relation to section 19(6), (7) & (10) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has contested the complaint on the following grounds:
- I. That the present complaint is nothing more than an evasive tactic on part of the complainant to get away with the delay and defaults on part of the complainant in the purported completion of the project. That it is an admitted position in the instant case that the complainant has failed to deliver the unit in question within the time stipulated under the agreement.
 - II. That the present complaint is even otherwise devoid of cause of action, in as much as it bases itself on the defaults committed by the complainant itself wherein it has been admitted that it is the complainant who could not deliver the unit as agreed in the stipulated time.
 - III. That the respondent is a bona fide purchaser of the property-in-issue and has been making timely payments since the beginning of this transaction. That the respondent filed an application form for expression of interest in relation to the property-in-issue situated at "*Emerald Plaza*" at *Emerald Hills, Sector 65, Golf Course Extension,*



Gurgaon, on 29.06.2010, and made a payment of Rs.5,00,000 as registration amount for the same on 08.06.2010.

- IV. That the respondent was provisionally allotted unit no. EPO-08-018, measuring 60.87 sq. mts, via letter dated 25.08.2010. That upon provisional allotment, the respondent made timely payments in favor of the complainant duly complying with the payment plan provided by the complainant.
- V. That the respondent entered into a *Buyer's Agreement* dated 16.11.2010 with the complainant. That complying with the construction-linked-payment plan (CLP) as enumerated in the buyer's agreement, the respondent had made timely payments as and when stipulated.
- VI. That the complainant has severely defaulted the *Buyer's Agreement*, by failing to give possession of the office space within the time stipulated. That accordingly, as per the buyer's agreement, the complainant was required and obligated to hand over the possession along with agreed parking and other amenities within 30 months, i.e., on or before 15.05.2013. That despite such obligation and the agreement having CLP Plan, the complainant miserably failed to not only deliver the possession in the given time but also failed to construct the project. That Clause 16(a)(ii) provided a grace period to the complainant as under:
- "...a grace period of one hundred and twenty (120) days over and above the period more particularly specified here-in-above in subclause (a)(i) of Clause 16, for applying and obtaining necessary approvals in respect of the Commercial Complex."*
- VII. Therefore, under the agreement, the complainant was required to give possession of the unit, complete in all aspects and as per the



specifications agreed under the agreement on or before 14.09.13, which includes the time of 30 months stipulated under Clause 16(a)(i) and grace period of 120 days under Clause 16(a)(ii). That the complainant has severely defaulted the above provisions of the *buyer's agreement* and failed to give possession even after the expiry of the grace period, due to which the respondent is entitled to compensation at the rate of 24% p.a., for amounts paid by the respondent. Handing over the possession is not a hollow provision but means that the possession would be deemed to have been delivered and offered only when the same is in accordance with the agreement between the parties including, but not limited to, the parking spaces as well as other amenities so agreed between the parties. It is an admitted position that till 24.01.2018 no possession, has ever been offered by the complainant.

- VIII. Thereafter, the respondent cannot be forced to accept possession which is delayed as well as deficient and not in accordance with the agreement. The possession has to be as per the terms of the agreement between the parties. It is also an admitted position that even if the purported possession letter dated 24.01.2018 is taken to have been delivered, which otherwise is denied, the said letter cannot be termed to be an offer to deliver possession as the said delivery so offered was not in accordance with the agreed terms. The possession was not only delayed but also the offer was deficient in as much as the parking space so agreed specifically did not exist for the respondent nor was ever offered. This, along with the fact that the respondent could not have used any other parking area or space other than the one obligated to be allotted in favor of the respondent,



made it mandatory on part of the developer to provide such dedicated parking space,. Accordingly, the possession as per the agreement has not been offered till date in fact and in law. Firstly, it is the complainant who have delayed the possession and thus cannot force the respondent to accept the possession contrary to the terms of the agreement, which would amount the offer of possession to be non-est. Therefore, there being no offer of possession to the respondent in accordance with the agreement, the respondent is entitled to the delay interest beyond 24.01.2018 till the actual possession is offered.

- IX. That the delay in giving possession by the complainant is not explicable under any of the clauses mentioned in the *Buyer's Agreement*. That the complainant has failed to provide any cogent proof of the averments made in the complaint regarding construction bans, lack of availability of building material, regulation of the construction and development activities by judicial authorities, etc. that allegedly caused the delay. That the requirements for sanction and approval in relation to groundwater vide the judgement relied upon by the complainant does not fall within the meaning of *Force Majeure* event as provided under the Agreement. Provision for sanction and approvals does not call for or fall within a *Force Majeure* event.
- X. That Clause 33 of the *Buyers Agreement* protects the complainant against delay in granting possession, if it is:

“...prevented, delayed or hindered by an act of God, fire, flood, explosion, war, riot, terrorist acts, sabotage, inability to procure or general shortage of energy, labor, equipment, facilities, materials or supplies, failure of transportation, strikes, lock outs, action of labor union, change in law or any

Act of Government (including Local and Municipal Authorities) or other cause (whether similar or dissimilar to the foregoing), not within the reasonable control of the Company."

That there has been no such event that warrants the application of the above clause. The complainant is a renowned real estate developer with international repute and has the resources and foresight to deal with the situations averred in the complaint, i.e., lack of availability of building material, regulation of the construction and development activities by judicial authorities, etc. It is a well-settled principal of law that mere commercial hardship in performance of contract is not covered under impossibility of performance of contract and is not included under the *Force Majeure* clause. The delay in granting possession by the complainant is intentional and mala fide. The complainant has been negligent and careless in its conduct and has conducted massive breach of the *Buyer's Agreement* by not granting the possession within the stipulated time.

- XI. That the complainant has severely deferred from its obligations under the *Buyer's Agreement* and made false representation to gain buyers for the property-in-issue. That while booking the property, complainant had assured construction of three levels of basement parking, while in reality, there are only two such levels.
- XII. That the complainant has again defaulted on the agreement and went back on its word by not providing reserved parking for the allottees, as was assured during the booking of the property and under the *Buyer's Agreement*. Instead, the parking is being provided on first come first serve basis by the complainant.

XIII. That it was agreed upon between the parties that the respondent will be granted rebate on payments made in advance by him via interest. However, the complainant has failed to share any details on calculation of interest accrued on the advance payment made by the respondent.

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

E. Jurisdiction of the authority

8. The authority observed 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, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has completed territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

9. 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 and duties of the allottee as per section 19 of the Act leaving aside compensation which is to be decided by the adjudicating officer, if pursued by the parties at a later stage.

F. Finding on the relief sought by the complainant/promoter

F.I Direct the respondent to pay the outstanding dues of Rs.3,19,611/- and direct the respondent to pay the interest @ MCLR plus 2% on the pending payments as per the payment plan.

10. In the present complaint, the complainant/promoter intends to give the possession of the apartment. The occupation certificate of the unit has been granted on 08.01.2018 and as per section 19(10) of the Act, the allottees shall take physical possession of the apartment, plot, building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building as the case may be. Section 19(10) proviso read as under:

"19. Right and duties of allottees. -

*.....
(10) Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be."*

11. However, the respondent/allottee has refrained himself from taking possession because the possession offered to him was not as per the builder buyer agreement. While booking the property, the complainant/promoter had assured construction of three levels of basement parking, while in reality, there are only two such levels. However, it is also a fact that the respondent/allottee has not shown



any intention to withdraw from the project. In view of the above, the respondent/allottee is liable to make the payments as per the payment plan opted by the respondent. The respondent/allottee is liable to make the requisite payment as per the provision of section 19(6) of the Act and as per section 19(7) to pay the interest at such rate as may be prescribed for any delay in payments towards any amount or charges to be paid under sub-section(6). Proviso to section 19(6) and 19(7) reads as under:

"19. Right and duties of allottees. -

(6) Every allottee, who has entered into an agreement for 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.

(7) The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6)."

12. On the other hand, it is the obligation of the promoter to offer possession in accordance with the terms of the builder buyer agreement.

Clause 18. Return of amount and compensation

- (1) *If the promoter fails to complete or is unable to give possession of an apartment, plot or building,-*
- (a) *In accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
- (b) *Due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

He shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where the 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.

13. Since, the builder have not offered the possession of the unit in accordance with the terms of the builder buyer agreement also duly completed by the date specified therein the builder buyer agreement i.e., 15.05.2013, the complainant/promoter is liable to pay delayed possession charges to the respondent/allottee.
14. **Admissibility of delay possession charges and delayed payment charges at prescribed rate of interest:**

Rule 15 of the Haryana Real Estate (Regulation and development) Rules, 2017 as amended upto date provide as follows:

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.

15. The authority observes that the definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoters, in 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;"*

16. 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., 13.03.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%. Therefore, the rate of interest chargeable from the allottee by the promoters, in default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default at the prescribed rate i.e.10.85%.

17. **Due date of handing over possession:** Clause 16 of the buyer's agreement dated 16.11.2010 provides time period for handing over the possession and the same is reproduced below:

16. POSSESSION

(a) Time of handing over the Possession

*(i) That the possession of the Office Spaces in the Commercial Complex shall be delivered and handed over to the Allottee(s) **within thirty (30) months of the execution hereof**, subject however to the Allottee(s) having strict complied with all the terms and conditions of this Agreement and not being in default under any provisions of this Agreement and all amounts due and*



payable by the Allottee(s) under this Agreement having been paid in time to the Company. The Company shall give notice to the Allottee(s) offering in writing to the Allottee to take possession of the Office Spaces for his occupation and use("Notice of Possession").

(ii) The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of one hundred and twenty (120) days over and above the period more particularly specified here in above in sub clause(a) of clause 16 and clause 16 for applying and obtaining necessary approvals in respect of the Commercial Complex.

18. As per clause 16 of the buyer's agreement, the complainant-promoter was under obligation to offer the possession of the unit to the respondent-allottee on or before 15.05.2013 or such time as may be extended by the competent authority. The occupation certificate for the project in question was granted by the competent authority on 08.01.2018 and the possession was offered on 24.01.2018.
19. 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 08.01.2018. However, the complainant-promoter offered the possession of the unit in question to the respondent-allottee only on 24.01.2018. So, it can be said that the respondent-allottee came to know about the occupation certificate only upon the date of offer of possession. Therefore, in terms of clause 19(10) of the Act, the respondent-allottee was obligated to take possession by 24.03.2018 (Offer of possession plus 2 months). However, the respondent-allottee has neither taken possession of the unit in question till date as admitted by the counsel of the respondent



nor has shown any intention to withdraw from the project. In such circumstances, the respondent is bound to obtain possession of the unit in question. It is further clarified that the respondent is entitled to delay possession charges which shall be payable from the due date of possession i.e. 15.05.2013 till the date of offer of possession plus two months i.e., 24.03.2018.

20. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent/allottee is in contravention of the section 19(6), 19(7) and 19(10) of the Act by not taking the possession as per the agreement and is liable to make the outstanding payments as per the payment plan opted by the respondent along with prescribed rate. Further, as per clause 16(a) of the agreement, the possession of the subject apartment was to be delivered by 15.03.2013 whereas, the possession has been offered by the complainant-promoter on 24.01.2018 which also shows failure on part of the complainant-promoter. Thus, the complainant/promoter is also liable to pay delay possession charges w.e.f 15.05.2013 till 24.03.2018 (offer of possession plus 2 months), at the prescribed rate of interest i.e., 10.85% p.a.

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F.II Direct the respondent to get the conveyance deed registered.

21. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the allottee. Whereas, as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.

F.III. Direct the respondent to clear the CAM charges of Rs.3,60,545/-.

22. In the present complaint, the complainant/promoter is seeking CAM Charges of Rs.3,60,545 /-. As per clause 23(b) and clause 23 (f) of the BBA,

Clause 23 MAINTENANCE

(b) the Allottee(s) further agrees and undertakes to pay the indicative and approximate maintenance charges as may be levied by the Maintenance Agency for the upkeep and maintenance of the Commercial Complex, its common area, utilities, equipment installed in the Commercial Complex and such other facilities forming part of the Land. Such charges payable by the Allottee(s) will be subject to escalation of such costs and expenses as may be levied by the Maintenance Agency. The company reserves the right to change, modify, amend, and impose additional conditions in the Maintenance Agreement at the time of its final execution.

(f) The Allottee(s) agrees that the Company and/or Maintenance Agency shall carry out the maintenance of common services and facilities pertaining to the said Commercial Complex from the date of issue of Notice of Possession to the Allottee(s) on pro-rata basis irrespective of whether the Allottee(s) is/are in actual possession of the Office Space or not. The Allottee(s) agrees to permit the Company or Maintenance Agency to enter into the Office Space or any part thereof, after due notice in writing and during the normal working hours, unless the circumstances warrant otherwise, for the purpose of inspection and also with a view to carry out the maintenance of common services and facilities and to set right any defect(s) in the Office Space, above and below the Office Space. Any refusal of the Allottee(s) to give such right to entry will be deemed to be a violation of this Agreement and the Company shall be entitled to take such action as it may deem fit. It is understood by the Allottee(s) that the maintenance and insurance of Office Space shall be responsibility of the Allottee(s).

23. Keeping in view the facts above, the authority deems fit that the complainant is right in demanding common area maintenance charges at the rate prescribed therein in the builder buyer agreement. However, the complainant shall not demand anything contrary to the terms and conditions of the builder's buyer agreement.

Car parking space

24. According to the respondent/allottee, he has refrained himself from taking possession because As per Clause 1.3 of the builder buyer agreement, the complainant/promoter promised to deliver a car parking space. Clause 1.3 of the builder buyer agreement is reproduced below:

1.3 Parking Space

- (a) (i) *The Office Space Allottee(s) shall have the right to park one car in the multi level basement parking of the building, free of any usage charges.*
(ii) *The Allottee(s) has/have applied for ___ number of car park for his/her exclusive use, at the rate of Rs.0/- (Rupees) as set out in the Payment Plan. The Allottee(s) understands that he/she does not have any right to sell, transfer, and deal with such exclusive parking space independent of the said office space. However, such exclusive parking space can only be transferred to any other allottee in the Commercial Complex only.*
(b) *The Allottee(s) undertakes to park his/her/their vehicle(s) in the multi level basement car parking and nowhere else in the Commercial Complex.*

25. The complainant/promoter has offered the possession of the unit to the respondent/allottee on 24.02.2018, after obtaining the occupation certificate from the concerned department on 08.01.2018. But the respondent/allottee did not come forward to take possession of the unit because the complainant/promoter has not offered the promised parking space to the respondent/allottee thus, the offer of possession



was deficient and not in accordance with the builder buyer agreement. The car parking space was specifically mentioned in the builder buyer agreement. This alongwith, the fact that the respondent could not use any other parking space or area other than the one obligated to be allotted in favour of the respondent/allottee, made it mandatory on the part of the complainant/promoter to provide such dedicated parking space. Also, its nowhere mentioned in the builder buyer agreement that the car parking space was to be offered on any specific basement level. Thus, even if the car parking basement levels have been reduced from 3 level to 2 level basement parking, the complainant/promoter is directed to provide the required car parking space to the respondent/allottee within one month from the date of this order, without payment of any further charges in lieu of the parking space. In case, the complainant/promoter fails to provide the car parking space, the respondent/allottee is at liberty to approach the Adjudicating Officer and seek compensation in respect of it.

F. Directions of the authority:

26. 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) of the Act:
 - i. The complainant-promoter is directed to pay the delayed possession charges w.e.f. 15.05.2013 till 24.03.2018 (offer of possession dated



24.01.2018 plus 2 months), at the prescribed rate of interest i.e., 10.85% p.a. and issue an updated statement of accounts within 30 days of passing this order.

- a. The complainant is further directed not to place any condition or ask the respondent to sign an indemnity of any nature whatsoever, which is prejudicial to their rights.
- b. The complainant/promoter shall be entitled to adjust the outstanding amounts payable by the respondent/allottee including the CAM charges of Rs.3,60,545/- from the delayed possession charges payable to the respondent/allottee. The respondent/allottee or the complainant/promoter as the case maybe is directed to pay the balance, if any, to the other party
- c. The complainant shall not charge anything from the respondent which is not the part of the buyer's agreement. The complainant is also not entitled to claim holding charges from the respondent/allottee at any point of time irrespective of being specified in the buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020. Also, the complainant shall not charge H-Vat security charges from the allottee.
 - ii. The respondent/allottee is directed to take the possession of the subject apartment as per the provisions of section 19(6), (7) and (10) of the Act within 2 month from the date of receipt of updated statement of accounts on payment of balance dues, if any.
 - iii. The respondent-allottee is further directed to participate in the execution of the conveyance deed upon payment of requisite stamp




duty by him as per norms of the state government as per section 17 of the Act as per their obligation under section 19(11) of the Act within 3 months from the date of handing over of possession. Further, only administrative charges of upto Rs.15,000/- can be charged by the promoter-developer for any such expenses which it may incur for facilitating the said transfer as has been fixed by the DTP office in this regard vide circular dated 02.04.2018

- iv. The complainant/promoter is directed to provide the required car parking space to the respondent/allottee within one month from the date of this order, without payment of any charges in lieu of the parking space and in case, if he fails to do so, the respondent/allottee is at liberty to approach the Adjudicating Officer for seeking compensation.
- v. The authority observes that the project is not registered hence, the planning branch of the authority is directed to take necessary action under the provision of the Act of 2016 for violation of proviso to Section 3(1) of the Act.

27. Complaint stands disposed of.

28. File be consigned to registry.

Dated: 13.03.2024


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