

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

Complaint no.: 6871 of 2022
Date of decision : 01.03.2024

1. Kavita
2. Satish Kumar Kapil
Both RR/o: - EEP-22-2202, Emaar Emerald Floor
Premium Sector – 65, Golf Course Extension Road,
Gurugram - 122018

Complainants

Versus

M/s Emaar India Ltd.
Office address: 306-308, square one, C-2, District
Centre, Saket, New Delhi-110017

Respondent

CORAM:
Shri Sanjeev Kumar Arora

Member

APPEARANCE:
None
Ms. Shikha (Advocate)

Complainants
Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees 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 allottees as per the agreement for sale executed inter-se them.

A. Unit and Project 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:

S. N.	Particulars	Details
1.	Name and location of the project	"Emerald floors Premium situated at Emerald Estate", Sector - 65, Gurugram
2.	Nature of the project	Group housing Colony
3.	Project area	25.49 acres
4.	DTCP license no.	06 of 2008 dated 17.01.2008 valid up to 16.01.2025
5.	Name of licensee	Active Promoters Pvt. Ltd & 4 others.
6.	RERA Registered/ not registered	Registered vide no. 104 of 2017 dated 24.08.2017 area admeasuring 82768 sqm. Valid up to 23.08.2022
7.	Unit no.	EFP-22-0202, 2nd floor (Page 29 of complaint)
8.	Date of booking/provisional allotment	01.02.2010 (Page 28 of complaint)
9.	Date of buyer agreement	13.04.2010 (Page 25 of complaint)



10.	Date of execution of affidavit w.r.t. endorsement	18.08.2011 (Page 102 of reply)
11.	Possession clause	11. POSSESSION (a) Time of handing over the Possession <i>Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 36 months from the date of execution of buyer's agreement. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of three months, for applying and obtaining the occupation certificate in respect of the Unit and/or the Project. (Emphasis supplied)</i>
12.	Due date of possession	13.04.2013
13.	Total sale consideration	Rs. 89,77,953/- (page 19 of complaint) Rs. 74,04,275/- (Page 42 of reply)
14.	Amount paid by the complainants	Rs. 91,11,099/- (page 19 of complaint)



		Rs. 83,11,837/- (Page 210 of reply)
15.	Occupation certificate	05.03.2019 (page 161 of reply)
16.	Offer of possession	17.01.2020 (page 163 of reply)
17.	Unit handover letter	24.02.2020 (Page 168 of reply)
18.	Conveyance deed	05.04.2021 (Page 172 of reply)

B. Facts of the complaint

3. The complainants have made the following submissions: -

- a. That the original allottee i.e Sumeet Singla received a marketing call from the office of respondent in the month of March,2010 for booking in the said residential project of the respondent. That, accordingly, a copy of the apartment buyer's agreement was sent to the original allottee. Hence the apartment buyer agreement dated 13.04.2010 was executed
- b. That thereafter they approached the original allottee for purchase of the unit in question and accordingly an agreement to sell was executed between the complainants and the original allottee. In pursuance of the documents submitted by the complainants, the respondent vide its letter dated 26.08.2011 shifted the allotment of the unit in question in the name of the complainants and all the



documents including but not limited to the agreement and the receipts were endorsed in their favour. Thus, they stepped into the shoes of the original allottee with respect to the unit in question.

- c. That as per Clause 11 (a) of the agreement, the possession of the unit was to be handed over by the respondent within a period of 36 months from the date of execution of the agreement along with a grace period of 3 months for applying and obtaining the occupation certificate.
- d. Thus, as per the terms and conditions of the agreement, the due date to handover the possession of the allotted unit is to be computed from the date of execution of the agreement. Since, the agreement was executed between the parties on 13.04.2010, hence, as per the terms of the agreement, the due date is to be computed from 13.04.2010. The due date of delivery of possession as per the agreed terms of the agreement thus elapsed way back on 13.04.2013. Since the occupation certificate was not applied during the period, hence the respondent is not entitled to any grace period of 3 months as provided in Clause 11(a) of the agreement.
- e. That the respondent finally offered the possession of the unit to them vide its letter dated 17.01.2020. Moreover, respondent further threatened the complainants vide the said offer of possession that in case the complainants fail to make the payment, Respondent would be at the liberty to charge interest, holding charges and invoke the provisions of the agreement against them. It is pertinent to mention herein that on one hand, respondent stated in the said

offer of possession that time was the essence and on the other hand it itself committed grave illegalities and delay in offer the possession.

- f. Another classic case of respondent taking advantage of its own wrongs and delays is evident from the fact that respondent had imposed GST charges of Rs. 65,996/- at the time of offer of possession. It is submitted that the due date to handover the possession of the unit to them was 13.04.2013. The GST came into force on 01.07.2017. Therefore, if respondent would have abided by its contractual obligations and handed over the possession to the complainants within the stipulated time period, the question of payment towards the GST by the complainants would not have even arisen. The tax which has come into existence after the due date of possession cannot be imposed on the complainants as the complainants cannot be held accountable for any amount not attributable to them on account of defaults and wrongs committed by respondent. Therefore, respondent is bound to refund the amount charged by them from the complainants towards the GST.
- g. It is submitted that respondent demanded Rs. 42,478/- towards the Lien marked FD for HVAT for the period from 01.04.2014 till 30.06.2017. It is submitted that the said amount was not payable by the complainants. Despite being aware of the actual facts and prevailing laws, respondent deliberately demanded the same from the complainants without any basis. The same amount to unfair practice and respondent cannot get away with the same. It has been



held by this Hon'ble in several of its judgments including the orders pertaining to the project in question that respondent cannot demand the liability of HVAT for the liability post 01.04.2014 till 30.06.2017 and the lien marked is to be removed.

- h. The respondent has demanded Rs. 40,000/- from them as registration charges. It is pertinent to mention herein that the Haryana Government vide its notification no. S.O.65/C.A.16/1908/Ss. 78 and 79/2018 dated 03.10.2018 had increased the maximum limit of the registration fees payable to Rs. 50,000/- which was, prior to the said notification was Rs. 15,000/-. As already stated above, the due date to handover the possession of the unit was much before 03.10.2018 and if respondent would have adhered to its contractual obligations, the increase in the registration charges for the unit in question would not have occurred. They cannot be held accountable for no fault attributable to it. It is pertinent to mention herein that respondent admitted that there was delay on its part in completing the construction of the unit as the respondent shared with them a statement of account as on 17.01.2020, wherein the respondent in Row 45 of the said statement credited a meagre amount of Rs. 7,43,141/- as delay compensation amount.
- i. That after making the payment towards the due amount, the possession of the unit has been handed over to them by the respondent vide its handover letter dated 24.02.2020. Similarly, servant quarter has been handed over vide letter dated 09.10.2020

and deed of apartment and deed of conveyance has been executed between them.

- j. That the cause of action for the present complaint is recurring one on account of the failure of respondent to perform its obligations within the agreed time frame. The cause of action again arose when the respondent failed to give delayed possession charges, compensation and refund of illegal charges and finally about a week ago when the respondent refused to compensate the complainants with the delayed possession interest amount, compensation and refund of illegal charges. The complainants reserve their right to approach the appropriate Forum to seek compensation.

C. Relief sought by the complainants:

4. The complainants have sought following relief:
- To direct the respondent to pay delay possession charges till actual offer of possession of the said unit along with prescribed rate of interest as per RERA.
 - To direct respondent to refund of GST charges wrongfully imposed from the complainants.
 - To direct the respondent to refund the charges towards lien marked FD.
 - To direct the respondent to refund the excess registration charges demanded from the complainants

D. Reply filed by the respondent:

5. The respondent has contested the complaint on the following grounds:



- a. That at the very outset, it is submitted that the instant complaint is untenable both in facts and in law and is liable to be rejected on this ground alone.
- b. That the complainants are estopped by their acts, conduct, acquiescence, laches, omissions, etc. from filing the present complaint.
- c. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 13.04.2010 as shall be evident from the submissions made in the following paragraphs of the present reply.
- d. That the complainants have not come before this Hon'ble Authority with clean hands and have suppressed vital and material facts from this Hon'ble Authority. The correct facts are set out in the succeeding paras of the present reply.
- e. That the original allottee i.e., Sumeet singla approached the respondent and expressed interest in booking of an apartment in the residential group housing colony developed by respondent known as "Emerald Floor Premier at Emerald Estate" situated in Sector 65, Urban Estate Gurgaon, Haryana. Prior to the booking, the complainants conducted extensive and independent enquiries with regard to the project, only after being fully satisfied on all aspects, that he took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question.



this instance, who had served a number of request letters and demand notes to the complainants to ensure that the payments are made in a timely fashion.

- k. At this stage, it is categorical to note that in the year, 2012 on the directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) was regulated. The Hon'ble Supreme Court directed framing of modern mineral concession rules. Reference in this regard may be had to the judgment of Deepak Kumar v. State of Haryana, (2012) 4 SCC 629. The competent authorities took substantial time in framing the rules and in the process the availability of building materials including sand which was an important raw material for development of the said project became scarce. Further, 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 in fact 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 and despite all the force majeure circumstances, the respondent completed the construction of the project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the complainants and demanding the prices only as and when the construction was being done.

1. That from the facts indicated above and documents appended, it is comprehensively established that a period of 166 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of Orders by the statutory authorities. All the circumstances stated hereinabove come within the meaning of force majeure, as stated above. Thus, the respondent has been prevented by circumstances

beyond its power and control from undertaking the implementation of the project during the time period indicated above and therefore the same is not to be taken into reckoning while computing the period of 48 as has been provided in the agreement. In a similar case where such orders were brought before the Hon'ble Authority in the complaint no. 3890 of 2021 titled "Shuchi Sur and Anr vs. M/S Venetian LDF Projects LLP" decided on 17.05.2022, the Hon'ble Authority was pleased to allow the grace period and hence, the benefit of the above affected 166 days need to be rightly given to the respondent builder.

- m. That all these circumstances come within the purview of the force majeure clause and hence allow a reasonable time to the respondent builder. That it must also be noted that the respondent had the right to suspend the construction of the project upon happening of circumstances beyond the control of the complainants as per clause 11(ii), however, despite all the hardships faced by the respondent, the respondent did not suspend the construction and managed to keep the project afloat through all the adversities. The Hon'ble Supreme Court noted in the case Saradmani Kandappan and Ors Vs S. Rajalakshmi and Ors, decided on 04.07.2011, MANU/SC/0717/2011: (2011) 12 SCC 18 held that the payments are to be paid by the purchaser in a time-bound manner as per the agreed payment plan and he fails to do so then the seller shall not be obligated to perform its

reciprocal obligations and the contract shall be voidable at the option of the seller alone and not the purchaser.

- n. It is further submitted that despite there being a number of defaulters in the project, the respondent had to infuse funds into the project and have diligently developed the project in question. That it must be noted by the Hon'ble Authority that despite the default caused, the respondent applied for grant of occupation certificate in respect of the said unit on 29.06.2017 and the same was thereafter issued by the concerned statutory authority vide memo bearing no. 5982 dated 05.03.2019. It is pertinent to note that once an application for grant of occupation certificate is submitted for approval in the office of the concerned statutory authority, respondent ceases to have any control over the same. The grant of sanction of the occupation certificate is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence. As far as the respondent is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authority for obtaining of the occupation certificate. No fault or lapse can be attributed to the respondent in the facts and circumstances of the case. Therefore, the time period utilized by the statutory authority to grant occupation certificate to the respondent is necessarily required to be excluded from computation of the time period utilized for implementation and development of the project.

- o. That thereafter, the complainants were offered possession of the unit in question through letter of offer of possession dated 17.01.2020. They were called upon to remit the balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit in question to the complainant. It is submitted that they delayed the procedure of taking the possession of the said unit on their own account.
- p. That without prejudice to the contentions of the respondent, it is submitted that the allegations of the complainants that the possession was to be delivered by July, 2013 are wrong, malafide and result of an afterthought in view of the fact that the respondent has received the payment from the allottees even after July, 2013. Infact, the last payment was received from the complainants on 17.01.2020; Assuming though not admitting that if there was a delay in delivery of project as alleged by the complainant, then they would not have remitted instalments after the alleged due date. The allegations put forth by the complainants qua the respondent are absolutely illogical, irrational and irreconcilable in the facts and circumstances of the case.
- q. That moreover, without accepting the contents of the complaint in any manner whatsoever, and without prejudice to the rights of the respondent, the respondent has credited an amount of Rs. 59,808/- on account of anti-profiting and an amount of Rs.

7,43,141/- as compensation to the complainants on account of the delay caused due to the default of the complainants in timely remittance of instalments and due to the reasons beyond the control of the respondent. That the respondent has always adhered to the terms and conditions of the buyer's agreement. The allegations put forth by the complainants qua the respondent are absolutely illogical, irrational and irreconcilable in the facts and circumstances of the case.

- r. The respondent earnestly requested the complainants to obtain possession of the unit in question and further requested the complainants to execute the conveyance deed in respect of the unit in question after completing all the formalities regarding delivery of possession. However, the complainants did not pay any heed to the legitimate, just and fair requests of the respondent and threatened the respondent with institution of unwarranted litigation but all requests of the respondent fell on deaf ears of the complainant. The instant complaint is preferred in complete contravention of their earlier representations and documents executed. The present frivolous complaint has been filed with the mala fide intention to mount undue pressure upon respondent thereby compelling it to succumb to their unjust and illegitimate demands.
- s. That it is submitted that the complainants are defaulting parties who has delayed in remitting the timely instalments. That the complainants approached the respondent for compensation and

for waiver of the delayed payment charges despite knowing the fact that the complainants themselves has defaulted in making timely payments. That the complainants were compensated as per the terms of the buyer's agreement. That despite being compensated by the respondent, the complainants with malafide intention approached this Hon'ble Authority only to fulfill their greediness.

- t. 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. The complainants needlessly avoided the completion of the transaction with the intent of evading the consequences enumerated in the buyer's agreement. Therefore, there is no equity in favor of the complainant. It is pertinent to note that an offer for possession marks termination of the period of delay, if any. The complainants are not entitled to contend that the alleged period of delay continued even after receipt of offer for possession. 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 finally took the possession of the Unit on 24.02.2020. That

multiple requests were made to the complainants regarding execution of the conveyance deed and consequently, the conveyance deed was executed on 05.04.2021. It was specifically and expressly agreed that the liabilities and obligations of the respondent as enumerated in the allotment letter or the buyer's agreement stand satisfied. The complainants have intentionally distorted the real and true facts in order to generate an impression that the respondent has reneged from its commitments. No cause of action has arisen or subsists in favor of the complainants to institute or prosecute the instant complaint. The complainants have preferred the instant complaint on absolutely false and extraneous grounds in order to needlessly victimize and harass the respondent.

- u. That after the execution of the conveyance deed, the contractual relationship between the parties stands fully satisfied and comes to an end. That there remains no claim/ grievance of the complainants with respect to the agreement or any obligation of the parties thereunder. This Hon'ble Authority has noted in *Renu Garg v Pioneer Urban Land & Infrastructure Ltd.* complaint no. 3189 of 2019, dated 12.03.2020, that after the execution of conveyance deed and after having taken the vacant and peaceful possession of the unit, the parties have entered into a settlement and thereafter, no claim persists.
- v. That after the execution of the conveyance deed, the parties are estopped from making any claims at this instance. It is a settled

matter of law that the necessary condition is the detriment of the other party by the conduct of the one estopped. An estoppel may result though the party estopped did not intend to lose any existing right. (Provash Chandra Dalui and Ors. vs. Biswanath Banerjee and Ors. (03.04.1989 - SC) : MANU/SC/0422/1989 = [1989] 2 SCR 401, [Para 23]). That after having executed the conveyance deed and having taken the unit after due inspections, no claim exists at this stage.

6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the complainants.

E. Jurisdiction of the authority

7. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

E. I Territorial jurisdiction

8. 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

9. 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;

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

10. So, in view of the provisions of the Act of 2016 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 complainants at a later stage.

F. Findings regarding relief sought by the complainant.

F.I. To direct the respondent to pay delay possession charges till actual offer of possession of the said unit along with prescribed rate of interest as per RERA.

11. In the present complaint, the complainants intend 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
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.

12. As per clause 11 of the buyer's agreement dated 13.04.2010, provides for handover of possession and is reproduced below:

*"Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the Unit **within 36 months from the date of execution of buyer's agreement.** The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of **three months, for applying and obtaining the occupation certificate** in respect of the Unit and/or the Project."*

13. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoters. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoters and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoters may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over

possession loses its meaning. The incorporation of such clause in the flat buyer agreement by the promoters are just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his 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.

14. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of within 36 months from the date of execution of buyer's agreement plus grace period of 3 months for applying and obtaining occupation certificate of the subject unit. The authority calculated due date of possession according to clause 11 of the agreement dated 13.04.2010 i.e., within 36 months from date of execution of agreement. The period of 36 months expired on 13.04.2013. As a matter of fact, the promoter has not applied to the concerned authority for obtaining completion certificate/ occupation certificate within the grace period prescribed by the promoter in the buyer's agreement. As per the settled law one cannot be allowed to take advantage of his own wrong. accordingly, this grace period of 3 months cannot be allowed to the promoter at this stage
15. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges as one of the reliefs. 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."

16. 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.
17. 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., 01.03.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
18. 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 11 of the agreement executed between the parties on 13.04.2010, the possession of the subject apartment was to be delivered within three years (36 Months) from the date of execution of this agreement. The period of 36 months expired on 13.04.2013. As far as grace period of 3 months is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 13.04.2013. The respondent has offered the possession of the subject apartment on 17.01.2020 after receiving OC from the competent authority on 05.03.2019. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. 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., 13.04.2013 till offer of possession(17.01.2020) plus two months i.e., 17.03.2020 at prescribed rate i.e., 10.85% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules after deduction of the delayed compensation already paid by the respondent.

F.II. To direct respondent to refund of GST charges wrongfully imposed from the complainants.

19. 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.

20. In the present complaint, the possession of the subject unit was required to be delivered by 13.04.2013 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

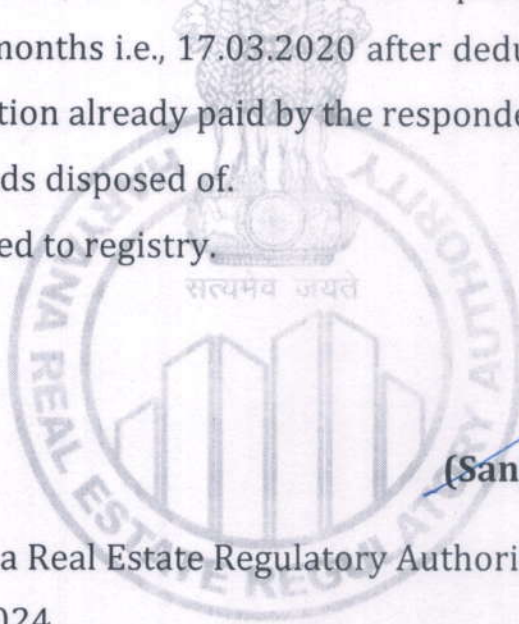
F.III To direct the respondent to refund the charges towards lien marked FD.

To direct the respondent to refund the excess registration charges demanded from the complainants.

21. The above-mentioned reliefs have not been pressed during proceedings by either of the parties. So, no directions in this regard can be effectuated at this stage.
22. Separate proceeding to be initiated by the planning department of the Authority for taking an appropriate action against the builder as the registration of the project has been expired.

G. Directions of the authority

23. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:
- a. The respondent is directed to pay interest at the prescribed rate of 10.85% p.a. for every month of delay from due date of possession i.e., 13.04.2013 till offer of possession (17.01.2020) plus two months i.e., 17.03.2020 after deduction of the delayed compensation already paid by the respondent.
24. Complaint stands disposed of.
25. File be consigned to registry.




(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.03.2024

HARERA
GURUGRAM