

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

Complaint no. : 4110 of 2021
Order reserved on : 18.01.2024
Order pronounced on : 15.02.2024

Emaar India Ltd.

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

Complainant

Versus

1. Neeraj Pahwa
2. Manoj Kumar Pahwa

Address: House No. A1/53, Sector- 7, Rohini, New
Delhi- 110085.

Respondents

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE

Shri Harshit Batra (Advocate)

Complainant

Shri Vijay Pal Chauhan (Advocate)

Respondents

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:

| S. No. | Particulars | Details |
|--------|--|---|
| 1. | Name of the project | Palm Premier at Palm Hills, Sector 77, Gurugram, Haryana |
| 2. | Area of the project | 24.477 acres |
| 3. | DTCP license no. | 56 of 2019 dated 31.08.2009 valid upto 30.08.2024 |
| 4. | Unit no. | PH4-67-0602, 6 th floor, [page 49 of complaint] |
| 5. | Provisional allotment letter dated | 12.04.2010 (Page no. 31 of the complaint) |
| 6. | Date of execution of buyer's agreement | 06.10.2010 [page 47 of complaint] |
| 7. | Possession clause | 11. POSSESSION (a) Time of handing over the Possession Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 33 months from the date of start of construction, subject to timely compliance of the provision of the buyers agreement by the allottee. |

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| | | <i>The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of three months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project.</i> (Emphasis supplied) |
| 8. | Date of start of construction as per statement of account at page 118 of complaint | 22.05.2011 |
| 9. | Due date of possession | 22.05.2014 (Note: - calculated from the date of start of construction i.e., 25.05.2011 + 3 months grace period) |
| 10. | Total consideration | Rs.85,20,293/- (As per Statement of account at page 118 of the complaint) |
| 11. | Total amount paid by the complainant | Rs.87,26,415/- (During proceeding dated 18.01.2024, confirmed by both the parties) |
| 12. | Occupation certificate | 24.12.2019 [Page no. 28 of complaint] |
| 13. | Offer of possession | 30.12.2019 [Page no. 140 of complaint] |
| 14. | Reminder letters for taking Possession | 04.02.2020, 05.03.2020, 06.04.2020 [Page no.150 of complaint] |

B. Facts of the complaint

3. The complainant/promoter has made following submissions in the complaint:
- That the licence no. 56 of 2019 dated 31.08.2019 for development of a group housing colony 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 "Palm Hills" at Sector- 77, Gurugram.

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- ii. That the complainant/promoter has been compliant with all the laws, rules and regulations. After having the project registered, the complainant developed the project by maintaining an exemplary bona fide and transparent conduct and consequently, obtained the occupancy certificate on 24.12.2019. The construction of approximately 1808 booked apartments has been completed, out of which 1116 units were handed over and consequently many families are residing in the project at the time of filing this complaint.
- iii. That the project has been duly completed after having obtained all the necessary approvals and fulfilling all the requirements as per the existing bye laws. That at the outset, without prejudice to the contents of this complaint, it must be noted that the complainant is a renowned real estate developer of international repute.
- iv. That the respondents/allottee approached the complainant /promoter applied for booking in the project. That upon the request of the respondents, the allotment was first made under the name of respondent no. 1 and "Manoj Pahwa (HUF)" on 12.04.2010, which, had clerical errors and was thus replaced with allotment letter dated 30.04.2010. The payment plan opted by the allottees was a construction linked plan. Thereafter, upon the request dated 07.05.2010 of the allottee, a change in the payment plan was made from construction linked to subvention, after which re-allotment was made vide allotment letter 11.05.2010. Thereafter, the substitution of the respondent no. 2 in place of "Manoj Pahwa (HUF)" was requested, which was accepted and facilitated by the Complainant. Subsequently, upon submission of the substitution documents, the allotment dated 11.05.2010 was endorsed in the name of the respondents. Thereafter,

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again, upon the request of the respondents, the payment plan was changed from subvention to construction linked and consequently, a re-allotment was made on 01.10.2010. The allotment letters dated 12.04.2010, 30.04.2010, 11.05.2010 with endorsement dated 17.05.2010, 01.10.2010; Letter dated 07.05.2010; undated letter for change in payment plan and substitution documents. Thereafter, a buyer's agreement dated 06.10.2010, was executed between the parties for unit bearing no. PH-4-67-0602, in the said project for the sale price of Rs.82,67,792/- which comes to be Rs.87,15,734/- with tax/GST, HVAT and IBMS/IFMS charges.

- v. That no demand was raised before-hand by the complainant. In order to ensure utmost transparency, the complainant raised demands as and when the construction was being done. That the respondents had always caused delay which has been critical to the complainant and stands in gross violation of the agreement. That such delay has gravely hampered the smooth functioning and construction of the project. This clearly shows the *mala fide* conduct exercised by the respondents which is in complete breach of the terms of the agreement.
- vi. That the delivery of possession of the unit by the complainant was "subject to the Allottee having timely complied with all the terms and conditions of this Agreement and not being in default under any provisions of this Agreement and compliance with all provisions, formalities, documentation etc..." as per clause 11(a) of the agreement. That it must be noted by the authority that despite the default caused by the respondents in fulfilling its obligations, the complainant did not default and instead completed the construction of the project without having regular payment of monies by the

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respondents. That as is known and practically understood that regular and timely payments by the allottees are pertinent towards the completion of a real estate project, yet, without the same being done in the present case, the complainant has shown an exemplary conduct as a real estate promoter which should be duly taken into account.

- vii. That the delivery of possession was further subject to *force majeure* conditions as spelled out in clause 27 of the agreement. 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 ground water 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 respondents and demanding the prices only as and when the construction was being done. All these circumstances come within the purview of the force majeure clause and hence allow a reasonable time to the complainant builder. That it must also be noted that the complainant had the right to suspend the construction of the project upon happening of circumstances beyond the control of the complainant as per clause 11(b)(i) of the agreement, however, despite all the hardships faced by the complainants, the complainants did not, suspend the construction and managed to keep the project afloat through all the adversities.
- viii. That soon after tackling all the adversities beyond the control of the complainant, the complainant completed the construction of the



project and only after obtaining the requisite permissions, legally offered the possession of the unit to the respondents on 31.10.2018 and request the payment of final dues and taking the possession of the unit on or before 01.12.2018. Thereafter, the respondents failed to take the possession of the unit. The complainant went beyond and ahead of its obligations and time and again issued possession reminder – REMINDER/719168 to the respondents requesting them to take the possession upon the clearing of dues and completion of formalities.

- ix. That soon after tackling all the adversities beyond the control of the complainant, the complainant completed the construction of the project and only after obtaining the requisite permissions, legally offered the possession of the unit to the respondents on 30.12.2019 and request the payment of final dues and taking the possession of the unit.
- x. That even after the issue of letter of offer of possession and the occupation certificate, the respondents have not cleared the pending dues against the unit, till date, i.e., even after almost 2 years. That the period of delay caused by the respondent is almost equivalent to a period taken for development of a new unit. That this inordinate delay is inexcusable and inexplicable. The pending dues payable by the respondents amounts to Rs.8,73,105/- as is evident from the calculation sheet. Additionally, the CAE amounting to Rs.9,330/- and CAM amounting to Rs.1,94,416/- are payable as calculated on 22.09.2021.
- xi. That it is the obligation of the respondents under section 19(6), (7) and section 19(10) of the Act to make the due payments, as agreed, to

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take the possession of the allotment within two months of occupancy certificate and to thereafter execute the conveyance deed. The respondents have a corresponding obligation as per the agreement to make the due payments against the unit, to take the possession within 30 days of offer of possession, and to have the sale deed executed upon full payments being made. Thus, the respondents are liable to clear its dues as per the calculation sheet along with statement of accounts annexed herewith and take the possession of the unit and execute and register the conveyance deed of the unit accordingly.

- xii. That in line with the holding of the Hon'ble Supreme Court in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna and Ors., decided on 11.01.2021 - MANU/SC/0013/2021*** where, Phase1 of the project had been issued the occupancy certificate, consequently, the developer offered the possession to the respective allottees. The Supreme Court directed such allottees to take the possession of their respective allotments.
- xiii. That the project is 100% completed and thus the respondents should be bound to make the due payments and should, under no circumstances, be allowed to wiggle out of its obligations by mere forfeiture. That should that be directed or allowed by the Hon'ble Authority, the complainant would be adversely affected despite having performed its obligations in a timely, efficient and effective manner. Hence, the Hon'ble Authority is requested to take note of the matter and direct the respondents to comply with its contractual and legal obligations.

C. Relief sought by the complainant/promoter

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4. The complainant has filed the present complaint for seeking following reliefs:
- i. Direct the respondents to pay the outstanding dues of Rs.8,73,105/-.
 - ii. Direct the respondents to pay the interest @ MCLR plus 2% on the dues until clearing of all the dues w.e.f. the date of default.
 - iii. Direct the respondents to take the possession of the unit and get it registered before Sub-registrar, Gurugram.
 - iv. Direct the Respondents to actively participate in the execution and registration of conveyance deed.
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 respondents

6. The respondents have contested the complaint on the following grounds:
- i. That the complainant published very attractive brochure highlighting the group housing colony to be known as "Palm Hills" at Sector 77, Gurugram, Haryana. The complainant introduced to the respondents that "Emaar MGF is a joint venture between Emaar Properties PJSC, Dubai - one of the world's leading real estate companies and MGF Developments Ltd., India - one of India's leading real estate developers. It claimed that the company has been instrumental in bringing the largest FDI in Indian real estate sector in order to lure prospective customer to buy apartments in the said project "Palm Hills.

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- ii. That the respondents were invited to the sale office and was lavishly entertained and promises were made to them that the project would be completed by the mid of 2013, including parking, horticulture, club and other common areas. The respondents were impressed by their statements and oral representations and ultimately lured to pay Rs.5,00,000/- as booking amount of the said apartment in 14.03.2010. Originally, the respondent no. 1 alongwith Manoj Pahwa (HUF) had applied for booking of the apartment in the project being developed by the complainant and apartment bearing no. PH-4-67-602, in the said project, situated in Sector 77, Gurugram was allotted in the name of the respondents.
- iii. That the builder-buyer's agreement was signed and executed on 06.10.2010 in favour of the respondent no. 1 and Manoj Pahwa (HUF). Since the bank refused to finance in the name of Manoj Pahwa (HUF), the same was substituted with the name of respondent no. 2 i.e. Manoj Kumar Pahwa. It is worthwhile to state that the complainant had charged an interest @ 24% p.a. for such delay due to name substitution in its record. Since, then the respondents are making regular payment of instalments except couple of days which occurred due to delay in courier services and for that the complainant had charged interest @ 24% p.a.
- iv. That at the time of booking of the apartment the respondents were told that the possession of the apartment would be delivered by mid of 2013. But the respondent was shocked to see that as per clause 11 of the BBA the complainant was under an obligation to deliver possession of the apartment within a period of 33 months from the date of start of construction. The possession of the apartment has not

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been handed over to the complainant within the stipulated period of 33 months, despite getting more than 90 per cent cost of the apartment. The respondents approached the complainant many times and asked for delivery of possession of their apartment as per the schedule of date of possession as per the agreement. However, the complainant did not give any justified response to their letters, emails, personal visits, telephone calls, etc. seeking information about the status of the project and delivery of possession of their apartment.

- v. That after a gap of more than six year from the promised date of possession the complainant sent a letter of offer of possession dated 30.12.2019. Immediately, after receipt of the letter of offer of possession, the respondents contact the office of the complainant and asked for delay penalty but the officials of the complaint did not pay any heed to the request made by the respondents.
- vi. That the respondents sent numerous emails to the complainant regarding delay penalty but the issue was not resolved by the company. They were asked to reach the office of the complainant on 16.06.2020 and they were offered Rs.20 Lakh toward the delay penalty and furniture voucher worth Rs.3 Lakh to settle the dispute. The respondents were further asked to sign some documents by the complainant, however, due to better sense of the respondents prevailed they did not sign the papers of the complainant. When the respondents refused to sign the said papers the official of the complainant threatened the respondents of dire consequences and informed them that they are up against a big organization which has huge resources and big battery of lawyers. Thereafter, the

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respondent sent a legal notice dated 11.09.2020 to the complainant through their counsel demanding a sum of Rs.55,06,310/- toward the damages and withdraws the invoices for maintenance charges.

- vii. That as per the statement of account annexed with the offer of possession, the respondents have already paid an amount of Rs.81,44,388/- out of total agreed sale consideration Rs.82,67,792/- till 30.12.2019. Thus, the respondents were liable to pay only Rs.1,23,404/- toward balance sale consideration. (**Note:** - During proceeding dated 18.01.2024, counsel of both the parties confirmed that the allottee has paid an amount of Rs.87,87,26,415/-).
- viii. That the complainant is liable to pay an amount of Rs.71,85,843/- till 31.01.2022 toward delay compensation on account of its failure to deliver the project as per the terms and conditions of the agreement.
- ix. That the statement of objects and reasons of the Act of 2016 inter-alia is an attempt to balance the interests of consumers and promoters by imposing certain responsibilities on both. The complainant has never been at all aggrieved and does not fall under the definition of aggrieved person, but still by filing such false, frivolous and vexatious complaint, the complainant is not only harassing the respondents to succumb to their illegal demand, but by filing such false complaint, they are misleading the Authority.
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

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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 respondents to pay the outstanding dues of Rs.8,73,105/-.

F.II Direct the respondents to pay the interest @ MCLR plus 2% on the dues until clearing of all the dues w.e.f. the date of default.

10. In the present complaint, the complainant-promoter has prayed that the allottee be directed to make payment of outstanding as per the payment schedule 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.. On the other hand the respondents-allottee while filing reply is counter



claiming delayed possession charges in terms of section 18 of the Act of 2016.

11. **Due date of possession and admissibility of grace period:** Clause 11(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 subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 33 months from the date of start of construction, subject to timely compliance of the provision of the buyers agreement by the allottee. The Allottee(s) agrees and understands that the Company shall be entitled to a **grace period of three months, for applying and obtaining the completion certificate /occupation certificate in respect of the Unit and/or the Project**".*

(emphasis supplied)

12. The promoter has proposed to hand over the possession of the said unit within 33 months from the date of start of construction and it is further provided in agreement that promoter shall be entitled to a grace period of three months for applying and obtaining completion certificate /occupation certificate in respect of the unit and/or the project. The construction commenced on 22.05.2011 as per statement of account dated 01.05.2017. The period of 33 months expired on 22.02.2014. Further, the complainant-builder has submitted that a grace period of three months may be allowed to it for applying and obtaining the completion certificate/occupation certificate in respect of the unit and/or the project in terms of order dated 08.05.2023 passed by the Hon'ble Appellate Tribunal in **Appeal No. 433 of 2022 tilted as Emaar MGF Lamd Limited Vs Babia Tiwari and Yogesh Tiwari** wherein it has been held that if the allottee wishes to continue with the project, he

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accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. The relevant portion of the order dated 08.05.2023, is reproduced as under:-

*"As per aforesaid clause of the agreement, possession of the unit was to be delivered within 24 months from the date of execution of the agreement i.e. by 07.03.2014. As per the above said clause 11(a) of the agreement, a grace period of 3 months for obtaining Occupation Certificate etc. has been provided. The perusal of the Occupation Certificate dated 11.11.2020 placed at page no. 317 of the paper book reveals that the appellant-promoter has applied for grant of Occupation Certificate on 21.07.2020 which was ultimately granted on 11.11.2020. It is also well known that it takes time to apply and obtain Occupation Certificate from the concerned authority. As per section 18 of the Act, if the project of the promoter is delayed and if the allottee wishes to withdraw then he has the option to withdraw from the project and seek refund of the amount or if the allottee does not intend to withdraw from the project and wishes to continue with the project, the allottee is to be paid interest by the promoter for each month of the delay. In our opinion if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. **So, in view of the above said circumstances, the appellant-promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the Occupation Certificate.** Thus, with inclusion of grace period of 3 months as per the provisions in clause 11 (a) of the agreement, the total completion period becomes 27 months. Thus, the due date of delivery of possession comes out to 07.06.2014."*

13. Therefore, in view of the above judgement and considering the provisions of the Act, the authority is of the view that, the promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the occupation certificate. Therefore, the due date of handing over of possession comes out to be 22.05.2014 including grace period of three months.
14. In the present complaint, the due date for handing over of possession comes out to be 22.05.2014 as computed above. On perusal of documents on record, it is observed that the occupation certificate of the said project was granted by the competent authority on 24.12.2019

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and the complainant has offered possession of the subject unit to the respondents-allottees on 30.12.2019.

15. The complainant-promoter is contending that the respondents-allottees have failed to abide by the terms and conditions of the buyer's agreement by not making the payments in timely manner as per the payment plan opted by them and by not taking the possession of the unit in question as per the terms and conditions of the buyer's agreement. Further, despite repeated follow-ups by the promoter and having performed its contractual obligations, the respondents-allottees withheld to perform their contractual obligation. The respondents-allottees have failed to make the requisite payment as per the provision of section 19(6) of the Act and as per section 19(7) of the Act 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). Section 19(6) and 19(7) reads as under:

"Section 19: - Right and duties of allottees. -

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- (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[1], 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).*

16. As per clause 1.2 (b) of the buyer's agreement, the respondents-allottees are also contractually liable to pay the instalment as per payment plan opted by them. Clause 1.2 (c) reproduced as under:

"(b) Payment Plan

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The Allottee agrees and undertakes to pay the balance amount of the Total Consideration strictly in accordance with the payment plan detailed in "Schedule of Payment" annexed hereto at Annexure-3 hereto. In the event the Allottee(s) fails, neglects and/or delays the payment of installments then, notwithstanding the right of the Company to cancel such allotment at its sole discretion at any time after such default in such payment occurs, the Company at its sole option and discretion, without prejudice to any other rights provided to it under this Agreement, waive such failures, neglects and/or delays in the payment of installments but on the condition that the Allottee(s) shall pay interest on the installment due, in addition to the installment due, to be calculated from the due date of outstanding installment charge simple interest @ 24% per annum till the date on which such installment is paid by the Allottee(s) to the Company. It is made clear and so agreed by the Allottee(s) that the exercise of such discretion to waive such failures, neglects and/or delays in the payment of installments by any one allottee(s) shall not be construed to be a precedent and/or binding on the Company to exercise such discretion in case of other allottee(s).

In case of delay in making payment by the Allottee(s) to the Company as per the Schedule of Payments as stated in Annexure- 3, the Company shall have the right to terminate the Agreement and forfeit the Earnest Money. The Company shall also be entitled to charge simple interest @ 24% p.a. at the time of every succeeding installment from the due date of installment, as per the Schedule of Payments, till the date of payment. However, the Company may in its sole discretion, waive its right to terminate this Agreement and enforce all the payments and seek specific performance of this Agreement. In such a case, the Parties agree that the possession of the Unit will be handed over to the Allottee(s) only upon the payment of all outstanding dues, penalties etc., along with interest by the Allottee(s) to the satisfaction of the Company."

17. As far as payment of outstanding dues of concerned the Authority observes that the respondent-allottees have already made payment of Rs.87,26,415/- against the total sale consideration of Rs.85,20,293/-. The said fact was also addressed during proceeding dated 18.01.2024, wherein, the counsel for the respondents-allottees stated that the allottees are interested in continuing with the project and stated that the respondent-allottees have already paid an amount of Rs.87,26,415/- and requests for physical possession of the allotted unit. The complainant-builder has not adjusted delayed possession charges even after a delay of more than 5 years of handing over of

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possession. In view of the above, the complainant-promoter is directed to issue a fresh statement of account within a period of one month from the date of this order after adjustment of delayed possession charges. Thereafter, the respondent-allottee is directed to pay outstanding dues, if any and take physical possession of the allotted unit.

18. 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 complainant-promoter is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. The authority has observed that the apartment buyer agreement was executed on 06.10.2010 and the possession of the subject unit was to be offered by 22.05.2014, as per clause 11(a) of the agreement. The complainant/builder has offered the possession of the subject unit on 30.12.2019 after receipt of OC on 24.12.2019. Accordingly, it is the failure of the complainant/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the complainant/builder to offer possession of the allotted unit to the respondent/allottee as per the terms and conditions of the agreement to sell dated 06.10.2010 executed between the parties. The complainant-promoter shall pay the delayed possession charges w.e.f. 22.05.2014 till 29.02.2020 (offer of possession dated 30.12.2019 plus 2 months), at equitable rate of interest i.e., 10.85% p.a. while computing the outstanding amount payable by the respondents/allottees. The complainant/promoter shall not charge anything from the respondents-allottees which is not the part of the buyer's agreement.



The complainant/promoter is not entitled to charge holding charges from the respondents/allottees at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 on 14.12.2020.

F.III Direct the respondents to take the possession of the unit and get it registered before Sub-registrar, Gurugram.

F.IV Direct the Respondents to actively participate in the execution and registration of conveyance deed.

19. As per clause 5 of unit buyer's agreement provides for 'conveyance of the unit and is reproduced below:

5. SALE DEED

The sale deed ("Sale Deed") shall be executed and get registered in favor of the Allottee(s) within six months from the date of receipt of occupation certificate, Total Consideration, PLC, additional EDC, and additional IDC, if any, late payment charges, interest and other charges and subject to compliances of all other terms and condition of this Buyer's Agreement by the Allottee(s). The cost of stamp duty, registration charges and other incidental charges and expenses will be borne by the Allottee in addition to the Total Consideration of the Unit, as and when demanded by the Company. The Allottee(s) may with the prior approval of the Company raise and or avail loan from banks and other housing finance companies for this purpose only. The Allottee(s) agrees that the provisions of this Agreement are and shall continue to be subject and subordinate to the lien of any mortgage heretofore or hereafter made/ created by the Company and any payments or expenses already made or incurred or which hereafter may be made or incurred pursuant to the terms thereof or incidental thereto or to protect the security thereof, to the fullest extent thereof and such mortgage(s) or encumbrances shall not constitute an objection to the title of the said Unit or excuse the Allottee(s) from making the payment of the Total Consideration of the said Unit or performing all the Allottee(s)' other obligations hereunder or be the basis of any claim against or liability of the Company, provided that at the time of the execution of the Sale Deed of the said Unit, it shall be free and clear of all encumbrances, lien and charges whatsoever.

20. The authority has gone through the conveyance clause of the agreement and observes that the conveyance has been subjected to all kinds of terms and conditions of this agreement and the respondents not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the



promoters. A reference to the provisions of sec. 17 (1) and proviso is also must and which provides as under:

"Section 17: - Transfer of title

17(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws: Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

21. Further, the Authority is of the view that the complainant/promoter is required to hand over the possession of the subject unit after obtaining of occupation certificate/CC/part CC from the competent authority as per obligations under section 11(4) (b) read with section 17 of the Act, 2016 and thereafter, the respondents/allottees are obligated to take the possession within 2 months as per Section 19 (10) of the Act, 2016. Further, the complainant/promoter is under an obligation as per section 17 of Act to get the conveyance deed executed in favour of the respondents/allottee and the respondents/allottees is under obligation under section 19(11) of the Act of 2016, to participate towards the registration of the conveyance deed as provided under section 17 of the Act. As delineated hereinabove, the occupation certificate in respect of the said project was granted on 24.12.2019 by the competent authority.
22. Thus, the respondents/allottees are directed to take physical possession of the subject unit within one months from the date of this order as the OC in respect of the said project has already been obtained by it from the competent authority. Further, the respondent/allottees

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are directed to execute the conveyance deed upon payment of requisite stamp duty by them 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 with 3 months from the date of this order.

F. Directions of the authority:

23. 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 further directed to pay the delayed possession charges w.e.f. 22.05.2014 till 29.02.2020 (offer of possession dated 30.12.2019 plus 2 months), at equitable rate of interest i.e., 10.85% p.a. while computing the outstanding amount payable by the respondents-allottees. Also, the amount of Rs.6,28,915/- so paid by the complainant/promoter towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the promoter in terms of proviso to section 18(1) of the Act.
- ii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the complainant/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- iii. The respondent/allottee is further directed to pay outstanding dues if any after adjustment of delayed possession charges and handover the physical possession of the subject unit within one months from the date of this order as the occupation certificate in respect of the



said project has already been obtained by it from the competent authority

- iv. The respondents/allottees are further directed to execute the conveyance deed upon payment of requisite stamp duty by them 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 with 3 months from the date of this order.
 - v. The complainant/promoter shall not charge anything from the respondents/allottees which is not the part of the buyer's agreement. The complainant/promoter is not entitled to charge holding charges from the respondents/allottees at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 on 14.12.2020.
24. Complaint stands disposed of.
25. File be consigned to registry.

Dated: 15.02.2024

V.1 - 3
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram