



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

**Complaint no.:** 1780 of 2023  
**Date of decision :** 01.03.2024

Rajiv Agarwal & Son HUF through its Karta Rajiv  
Agarwal

**Both RR/o:** - S-443, Greater Kailash, Part-I, Defence  
Colony, New Delhi-110048

**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:**

Shri. Heman Phogat(Advovate)

Shri. Harshit Batra(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. No.	Heads	Information
1.	Project name and location	Emerald Floors Premier III at Emerald Estate, Sector 65, Gurugram.
2.	Project area	25.499 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	06 of 2008 dated 17.01.2008
	License valid till	16.01.2025
	Licensee name	Active Promoters Pvt. Ltd. and 2 others C/o Emaar MGF Land Ltd.
	Area for which license was granted	25.499
5.	HRERA registered/ not registered	<b>Registered vide no. 104 of 2017 dated 24.08.2017 for 82768 sq. mtrs.</b>
	HRERA registration valid up to	<b>23.08.2022</b>
6.	Applied for occupation certificate on	06.07.2020 [page 119 of reply]
7.	Occupation certificate granted on	11.11.2020 [page 120 of reply]
8.	Date of provisional allotment letter	13.09.2011 [page 35 of reply]
9.	Unit no.	EFP-III-47-501, 5 <sup>th</sup> floor, building no. 47 [Page 35 of reply]



10.	Unit measuring (super area)	1600 sq. ft.
11.	Date of execution of buyer's agreement	22.02.2012 [page 20 of complaint]
12.	Possession clause	<b>11. POSSESSION</b> <b>(a) Time of handing over the Possession</b> <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 <b>within 24 months from the date of execution of buyer's agreement.</b> The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of <b>three months, for applying and obtaining the occupation certificate</b> in respect of the Unit and/or the Project. (Emphasis supplied) [page 29 of complaint]</i>
13.	Due date of possession	22.02.2014 [Note: Grace period is not included]
14.	Total consideration as per the statement of account dated 27.09.2023 at pg. 127 of reply	₹ 1,20,42,943/-



15.	Total amount paid by the complainants as per statement of account dated 27.09.2023 at pg. 127 of reply	₹ 1,20,42,943/-
16.	Offer of possession	<b>17.11.2020</b> [page 123 of reply]
17.	Delay compensation already paid by the respondent in terms of the buyer's agreement as per statement of account dated 27.09.2023 at pg. 128 of reply	₹ 5,50,751/-
18.	Conveyance deed	05.09.2022 [pg. 71 of complaint]
19.	Unit Handover letter	20.03.2021 [pg. 115 of complaint]

**B. Facts of the complaint**

3. The complainants have made the following submissions: -

- a. That, after going through advertisement published by respondents in the newspapers and as per the brochure /prospectus provided by respondents, the complainant has applied for the allotment of a residential floor bearing no. EFP-III-47-0501, measuring 1600 Sq. ft., in the upcoming project named, EMERALD FLOORS PREMIER-III, Sector-65, Village Maidawas, Gurugram, for total sale consideration of Rs.1,20,42,943/- (hereinafter be referred to the as the said "Flat").
- b. The respondent is in right to exclusively develop, construct and build residential building, transfer or alienate the unit's floor



space and to carry out sale deed, agreement to sell, conveyance deeds, letters of allotments etc.

- c. That, a conveyance deed vide registration no. 6562 dated 05.09.2022 has been registered in the office of Sub-Registrar, Badshahpur in favour of the complainant by the respondent in respect of the above said unit.
- d. That, as per clause-11(a) of the buyer's agreement dated 22.02.2012, the respondent was under legal obligation to handover the possession of the floor/ unit to the complainant within 24 months from the date of execution of buyer's agreement.
- e. That the respondent delayed the project and issued offer of possession on 17.11.2020, whereby directed the complainant to complete the payment and to schedule a home orientation of the unit for handover. Upon receiving the offer of possession, the complainant cleared all his final dues timely as per the schedule of payment and visited their unit for taking possession.
- f. That the complainant upon receiving of letter of possession requested the respondent to pay the delayed possession charges after the adjustment of the balance sale consideration to which the official of the respondent refused to compensate the complainant in any manner whatsoever and further pressurized the complainant to clear the outstanding payment due on offer of possession otherwise the complainant shall be subjected to heavy delayed penalty and holding charges. Further, being

helpless and having no other option, the complainant cleared off his dues and took over the possession of his floor/ unit.

- g. That the respondent in spite of being in default for delay in handing over the possession were imposing holding charges upon the complainant despite the fact that the complainant timely paid all his installments as and when demanded by the respondent and in order to evade from its legal liability to compensate the complainant for delayed possession charges pressurized the complainant to take offer of possession otherwise the complainant shall be subjected to pay heavy penalty.
- h. That after taking possession, the complainant has approached respondent several times to pay him the delayed possession charges but the respondent has clearly refused to accept just and genuine requests of the complainant.
- i. That, when nothing fruitful came out, the complainant got served a legal notice dated 20.03.2023 to the respondent, vide which the respondent was called upon to pay the delayed possession charges to the complainant within 15 days from the receipt of the legal notice. Even after receipt of the legal notice, the respondent has not paid even a single penny to the complainant on account of delayed possession charges to the complainant.
- j. The respondent has committed grave deficiency in completing the project on time and as per the buyer's agreement, there is a



delay of 81 months in delivering the possession of the said flat/unit.

- k. The complainant has undergone severe mental harassment due to the negligence on the part of the respondent to deliver his flat /unit on time agreed. Therefore, respondent has forced the complainant to suffer grave, severe and immense mental and financial harassment with no fault on his part. The complainant being common person just made the mistake of relying on respondent's false and fake promises, which lured him to buy a unit in the aforesaid project of the respondent. The respondent has trapped the complainant in a vicious circle of mental, physical and financial agony, trauma and harassment in the name of delivering his dream home within deadline representing itself as a multinational real estate giant.
- l. The cause of action accrued in favour of the complainant and against the respondent, when complainant had booked the said flat /unit and it further arose when respondent failed/neglected to pay the delay possession charges to the complainant. The cause of action is continuing and is still subsisting on day-to-day basis.

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

4. The complainants have sought following relief:
- a. To direct the respondent to pay delay possession charges till offer of possession of the said unit along with prescribed rate of interest as per RERA.
- b. Litigation cost- ₹50,000/-.

**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 complainant is 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 22.02.2012 as shall be evident from the submissions made in the following paragraphs of the present reply.
  - d. That the complainant has 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 complainant, i.e., Rajiv Agarwal and Son HUF through his Karta Mr. Rajiv Agarwal 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 Phase -III at Emerald Estate" situated in Sector 65, Urban Estate Gurgaon, Haryana. Prior to the booking, the complainant 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.

- f. That thereafter the complainant, vide an application form dated 24.08.2011 applied to the respondent for provisional allotment of the unit. Pursuant thereto, unit bearing no EFP-III-47-0501, on 5th Floor in Tower 47 admeasuring 1600 sq. ft. (tentative area) was allotted vide provisional allotment letter dated 13.09.2011. The complainant consciously and willfully opted for a construction-linked payment plan for remittance of sale consideration for the unit in question and further represented to the respondent that he shall remit every installment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainant and proceeded to allot the unit in question in his favor.
- g. Thereafter, a buyer's agreement dated 22.02.2012 was executed between the complainant and the respondent. It is pertinent to mention that the buyer's agreement was consciously and voluntarily executed between the complainant and the respondent, after having read and understood the terms and conditions of the same which are binding on the Parties.
- h. That as per clause 11(a) of the agreement, the due date of possession was subject to the allottees having complied with all the terms and conditions of the agreement. That being a contractual relationship, reciprocal promises are bound to be maintained. That it is respectfully submitted that the rights and



obligations of allottee as well as the builder are completely and entirely determined by the covenants incorporated in the agreement which continues to be binding upon the parties thereto with full force and effect. That the relevant portion of the paragraph is reproduced herein for ready reference "Subject to terms of this clause and subject to the Allottee(s) 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..."

- i. It is submitted that the remittance of all amounts due and payable by the complainant under the agreement as per the schedule of payment incorporated in the agreement was of the essence. It has also been provided therein that the date for delivery of possession of the unit would stand extended in the event of the occurrence of the facts/reasons beyond the power and control of the respondent. It is pertinent to mention that it was categorically provided in clause 11(b)(iv) that in case of any default/delay by the allottees in payment as per the schedule of payment incorporated in the agreement, the date of handing over of possession shall be extended accordingly, solely on the respondent's discretion till the payment of all outstanding amounts to the satisfaction of the respondent.
- j. That it is submitted that the complainant had defaulted/delayed in making the due payments, upon which, reminders were also served to the complainant and had paid delayed payment



interest at multiple occasions. That the bonafide of the respondent is also essential to be highlighted at 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 complainant 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 20.07.2020 and the same was thereafter issued by the concerned statutory authority vide memo bearing no. 20094 dated 11.11.2020. 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 complainant was offered possession of the unit in question through letter of offer of possession dated 17.11.2020. The complainant was 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 the complainant 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 complainant that the possession was to be delivered by Feb, 2014 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 Feb, 2014. Infact, the last payment was received from the complainant on 21.05.2020; Assuming though not admitting that if there was a delay in delivery of project as alleged by the complainant, then the complainant would not have remitted instalments after the alleged due date. The allegations put forth by the complainant 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.1,40,415/- on account of anti-profiting and an amount of Rs.5,50,751/- as compensation to the complainant on account of



the delay caused due to the default of the complainant 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 complainant qua the respondent are absolutely illogical, irrational and irreconcilable in the facts and circumstances of the case.

- r. The respondent earnestly requested the complainant to obtain possession of the unit in question and further requested the complainant to execute the conveyance deed in respect of the unit in question after completing all the formalities regarding delivery of possession. However, the complainant 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 complainant is defaulting parties who has delayed in remitting the timely instalments. That the complainant approached the respondent for compensation and for waiver of the delayed payment charges despite knowing the fact that the complainant themselves has defaulted in making





timely payments. That the complainant was compensated as per the terms of the buyer's agreement. That despite being compensated by the respondent, the complainant with malafide intention approached this Hon'ble Authority only to fulfill their greediness.

- t. That it is pertinent to mention that the complainant 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 complainant refrained from obtaining possession of the unit in question. The complainant 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 complainant are not entitled to contend that the alleged period of delay continued even after receipt of offer for possession. The complainant has consciously and maliciously refrained from obtaining possession of the unit in question. Consequently, the complainant is liable for the consequences including holding charges, as enumerated in the buyer's agreement, for not obtaining possession. The complainant finally took the possession of the Unit on 20.03.2021. That multiple requests were made to the complainant regarding execution of the conveyance deed and consequently, the conveyance deed was executed on 05.09.2022. 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 complainant has 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 complainant to institute or prosecute the instant complaint. The complainant has 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 complainant 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 offer of possession of the said unit along with prescribed rate of interest as per RERA.**

11. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under:

*Section 18: - Return of amount and compensation*

*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 22.02.2012, 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 24 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 24 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 22.02.2012 i.e., within 24 months from date of execution. The period of 24 months expired on 22.02.2014. 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 22.02.2012, the possession of the subject apartment was to be delivered within two years (24 Months) from the date of execution of this agreement. The period of 24 months expired on 22.02.2014. 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 22.02.2014. The respondent has offered the possession of the subject apartment on 17.11.2020 after receiving OC from the



competent authority on 11.11.2020. 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., 22.02.2014 till offer of possession plus two months i.e., 17.01.2021 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. Litigation Cost- ₹50,000/-.**

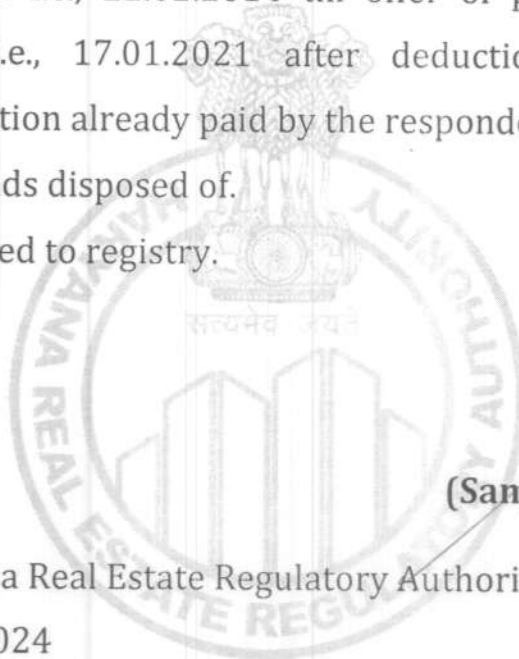
19. The complainants in the aforesaid relief are seeking compensation. The authority observes that Hon'ble Supreme Court of India, in case titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled for claiming compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. Therefore, the complainants may approach the adjudicating officer for seeking compensation.

**G. Directions of the authority**





20. 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., 22.02.2014 till offer of possession plus two months i.e., 17.01.2021 after deduction of the delayed compensation already paid by the respondent.
21. Complaint stands disposed of.
22. File be consigned to registry.



*(Signature)*  
**(Sanjeev Kumar Arora)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.03.2024