

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

Complaint no. : 7545 of 2022  
Order pronounced on : 08.05.2024

Pooja Saggi

**Address:** H.no-635, Double storey,  
New Rajinder Nagar, New Delhi.

**Complainant**

**Versus**

Emaar Mgf Land Ltd

**Address:** - Ece house, 28 Kasturba Gandhi Marg,  
New Delhi-110001

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Shri Akshat Gogna (Advocate)

Shri Harshit Batra (Advocate)

Complainant  
Respondent

**ORDER**

1. The present complaint dated 09.12.2022 has been filed by the complainant/allottee in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be

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

**A. Project and unit related details**

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

Sr. No.	Particulars	Details
1.	Name of the project	"Emerald Floors Premier at Emerald Estate", Sector-65, Gurugram, Haryana.
2.	Total area of the project	25.499 acres
3.	Nature of the project	Group housing project
4.	DTCP license no.	06 of 2008 dated 17.01.2008
	Validity of license	16.01.2025
	Licensee	Active Promoters Pvt. Ltd. and 2 others.
	Area for which license was granted	25.499 acres
5.	Registered/not registered	<b>Registered</b> vide no. 104 of 2017 dated 24.08.2018 [For 82768 sq.mtrs]

	Validity of registration	23.08.2022
6.	Allotment letter	13.09.2011 (As on page no. 38 of reply)
7.	Unit no.	EEP-III-38-0202, 2 <sup>nd</sup> floor, Tower-38 (As on page no. 38 of reply)
8.	Area of the unit (super area)	1650 sq.ft. (As on page no. 38 of reply)
9.	Buyer's agreement	20.03.2012 (As on page no. 44 of reply)
10.	Possession clause	<p><b>11. POSSESSION</b></p> <p><b>(a) Time of handing over the Possession</b></p> <p><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</b></i></p>

		<p><b>execution of Buyer's Agreement.</b>                  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.</p> <p>[Emphasis supplied]                  (As on page no. 53 of reply)</p>
11.	Due date of possession	20.06.2014 [Note:- Grace period is included]
12.	Total consideration	Rs.1,24,98,556/- (As per S.O.A dated 01.05.2023 at page no. 131 of reply)
13.	Total amount paid by the complainant	Rs.1,24,10,420/- (As per S.O.A dated 01.05.2023 at page no. 132 of reply)
14.	Occupation certificate	11.11.2020 (As on page no. 119 of reply)
15.	Offer of possession	17.11.2020 (As on page no. 122 of reply)
16.	Conveyance deed	Not executed
17.	Delay compensation paid by the respondent in terms of the	Rs.5,60,638/- (As per S.O.A dated 01.05.2023 at

	buyer's agreement	page no. 132 of reply)
18.	Legal notice sent by the complainant to the respondent seeking withdrawal of demands raised vide letter dated 20.11.2020 and handing over of possession of the subject unit on	17.05.2022 (As on page no. 181 of complaint)

**B. Facts of the complaint**

3. The complainant has made the following submissions in their complaint:
- I. That the complainant is a law abiding citizen of India and presently residing at Hong Kong. The present complaint is filed by the complainant through its authorised representative and Power of Attorney Holder Mr. Vineet Saggi.
  - II. That the respondent is a company incorporated under the provisions of the Companies Act and is engaged in the business of promotion, construction, development and sale of various real estate and infrastructure development projects which includes commercial multi storied buildings, shopping malls hotels as well as residential township.
  - III. That in June, 2010, the respondent launched a group housing residential project under the name of "Emerald Floors Premier III" situated at Emerald Estate, Sector-65, Urban Estate, Gurugram, Haryana.

- IV. That based on the representations made in the advertisements, the complainant booked a 3 BHK apartment admeasuring 1650 sq. ft. (super area) @ Rs. 6150 per sq. ft on 02.06.2011 and opted construction linked payment plan. Pursuant to the booking, the respondent informed the complainant about the allotment of apartment bearing No. EPF-III-38-0202, admeasuring 1650 sq. ft. situated on 2<sup>nd</sup> floor in the building no-38 of the said project.
- V. That at the time of booking, the respondent represented that all the paper work in respect to the project are complete and all the approvals/permissions from the authorities have been obtained. Therefore, for the purpose of facilitation of purchase of the apartment, the complainant can obtain financial assistance/loan from any bank or financial institution. In fact, for obtaining financial assistance/loan, the respondent had recommended HDFC Bank as preferred banking partner for the said project and gave assurance that all the formalities with respect to loan will be done within a span of 3 days.
- VI. That the complainant in September, 2011 approached, HDFC Bank, Gurgaon branch for financial assistance for a housing loan. However, to utter shock and surprise to the complainant, her loan application was rejected by the HDFC Bank in December, 2011 for the reason that the project does not meet the bank's technical norms. Thereafter, on further enquiry by the complainant, it was found that the paperwork in respect of the project were incomplete on the part of the respondent because of which the

application for loan was rejected. Subsequently, in April, 2012, the complainant again approached the HDFC Bank and re-applied for loan, which was sanctioned but the same got lapsed as no demands were raised by the respondent during that period.

- VII. That on 23.11.2011, the respondent without completing the paperwork of the project raised another demand of Rs.7,77,996/- which was complied by the complainant. Subsequently on 20.03.2012, a Builder Buyer Agreement was executed between the complainant and the respondent. It is relevant to mention here that as per clause 11(a) of the agreement, the respondent was duty bound to deliver the possession of the said apartment within a period of 24 (twenty four) months from the date of execution of Buyer's Agreement i.e. by March, 2014.
- VIII. That even though the agreement stated that the payments were construction linked and therefore, the demand could have only been raised after reaching/achieving such milestones. However, the respondent in complete disregard to the actual state of the construction kept on raising demands without reaching the milestones in 2013-2014. In this regard, the complainant submits that in the month of September- 2013, the respondent had raised 3 demands amounting to Rs.27,77,404/- which were diligently paid by the complainant. Thereafter, the respondent raised 3 more demands amounting to Rs.25,69,539/-. The manner in which the demands were raised by the respondent shows that the same were raised in violation to schedule of payment and in a complete

premature manner without even reaching the requisite milestone. It may be relevant to mention here that as the loan sanctioned in favour of the complainant got lapsed because the respondent did not make any demands, the complainant again approached the bank to obtain loan. As the process for disbursement of loan took some time therefore, the complainant could not make the payment within time.

- IX. That in April 2017, the respondent sent demand notice for payment of Rs.90,143/- allegedly towards VAT. The complainant under duress and in order to avoid levy of any penalty, diligently paid the same. It is submitted that the aforesaid amount has been illegally demanded and unlawfully collected by the respondent as the complainant was under no obligation to pay VAT to the respondent. Therefore, the complainant is entitled to interest on the amount paid.
- X. That it is submitted that the total consideration towards the full and complete purchase of the apartment as agreed at the time of booking and execution of agreement was Rs.1,18,83,154/- and as on date, the respondent have collected a sum of Rs.1,24,10,420/- which is way more than the agreed sale consideration..
- XI. That on 12.11.2020 after a lapse of more than 6 years from the promised date of delivery, the respondent vide email informed the complainant that Occupation Certificate in respect of the project has been received and an intimation for possession will be sent soon. Thereafter, on 17.11.2020 the respondent sent an intimation



of possession to the complainant.

- XII. That it is submitted that along with the letter of intimation, the respondent also raised final demand and demanded a further amount of Rs.7,94,170/-. Such a conditional offer cannot be considered as a valid and legal offer of possession.
- XIII. It is submitted, in the meanwhile the respondent informed the complainant about the revision of stamp duty rates in the State of Haryana and demanded an amount of Rs.5,51,450/- towards the increased stamp duty. The stamp duty was increased because of delay and default on part of the respondent. Therefore, the liability towards the same has to be borne by the respondent and no liability whatsoever towards the increase of stamp duty rates can be pinned on the complainant.
- XIV. That it is further submitted that the respondent has contravened and defaulted in adhering to the terms and conditions of the agreement as well as the provisions of the Act. Furthermore, the respondent has fraudulently collected money well in advance from the complainant without performing or completing the corresponding work at the site.
- XV. That the complainant issued a legal notice to the respondent on 17.05.2022 to withdraw the offer of possession letter dated 17.11.2020 and handover possession to the complainant within 7 days from receipt of the notice. It is submitted that the respondent despite receiving the legal notice neither took any steps to address the grievance of the complainant nor replied to legal notice.

XVI. That on 25.08.2022, the respondent via email sent the reply to the legal notice and thereby asked the complainant to withdraw the legal notice and take the possession of the apartment after payment of the outstanding dues in order to avoid cancellation of the apartment.

**C. Reliefs sought by the complainant**

4. The complainant is seeking the following relief:

- i. Direct the respondent to pay delayed possession charges interest from the due date of possession till the actual handing over of possession.
- ii. Declare that the offer of possession dated 17.11.2020 is illegal, void.
- iii. Declare the charges demanded towards delayed Payment, registration charges and advance month maintenance to be null and void and further to settle the charges already taken towards administrative and miscellaneous charges.
- iv. Direct the respondent to refund the amount of GST, VAT, service tax and other charges wrongly collected from the Complainant alongwith interest and also directed to not collect security amount towards VAT security for the period of April 2014 to June 2017.
- v. Direct the respondent to refund an amount of Rs.2,50,000/- alongwith interest calculated wrongly collected from the complainant as car parking charges.
- vi. Direct the respondent to not to force the complainant to sign any indemnity cum undertaking document.

- vii. Direct the respondent to pay an amount of Rs.30,00,000/- towards mental agony and harassment suffered by the complainant at the hands of the respondent on account on non-delivery of possession of the apartment to the complainant.
  - viii. Direct the respondent to not charge holding charges, maintenance charges, till the handing over of delivery of the apartment, complete in all respects, to the complainant.
5. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

**D. Reply filed by the respondent.**

6. The respondent has contended the complaint on the following grounds:
- I. That the complainant has got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the act.
  - II. That the present complaint is not maintainable in law or on facts. The present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint are beyond the purview of the Authority and can only be adjudicated by the Adjudicating

Officer/Civil Court. Therefore, the present complaint deserves to be dismissed on this ground alone.

- III. That the complainant is not an "Allottee" but an Investor who has booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale. The apartment in question has been booked by the complainant as a speculative investment and not for the purpose of self-use as her residence. Therefore, no equity lies in favour of the complainant.
- IV. That the complainant approached the respondent and expressed interest in booking of an apartment in the residential group housing colony 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 and only after being fully satisfied on all aspects, that she took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question.
- V. That pursuant thereto, unit bearing no **EFP-III-38-0202**, 2<sup>nd</sup> Floor, admeasuring 1650 sq. ft. was allotted vide provisional allotment letter dated 13.09.2011. The complainant consciously and wilfully opted for a construction-linked payment plan for remittance of sale consideration for the unit in question and further represented to the respondent that she shall remit every instalment on time as per the payment schedule.

- VI. Thereafter, a Buyer's Agreement dated 20.03.2012 was executed between the complainant and the respondent. As per clause 11(a) of the Buyer's Agreement, the due date of possession was subject to the allottees having complied with all the terms and conditions of the Buyer's Agreement.
- VII. It is submitted 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. However, it shall solely be on the respondent's discretion whether to extend the said date of handing over of possession of the unit till the payment of all outstanding amounts by the complainant to the satisfaction of the respondent.
- VIII. 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 complainant to ensure that the payments are made in a timely fashion. A list of the Demand notes, request letters, and reminder are as under:

S. No.	Particulars	Ref No.	Dated
<b>2011</b>			
1.	Payment request letter	EFP/713685-PR-020/20111024083946385	24.10.2011
2.	Reminder 1	REMINDER1/713685	14.11.2011

2013			
3.	Payment request letter	EFP/713685-PR-030/20130830164749609	30.08.2013
4.	Payment request letter	EFP/713685-PR-040/20130830185640517	30.08.2013
5.	Payment request letter	EFP/713685-PR-050/20130830190810678	30.08.2013
6.	Payment request letter	EFP/713685-PR-060/20131007175755292	07.10.2013
7.	Payment request letter	EFP/713685-PR-080/20131008135633909	08.10.2013
8.	Payment request letter	EFP/713685-PR-070/20131008123329564	08.10.2013
9.	Payment request Reminder 1	REMINDER1/713685	31.10.2013
10.	Payment request Reminder 2	REMINDER2/713685	15.11.2013
11.	Payment request letter	EFP/713685-PR-070/20131223182120455	23.12.2013
2017			
12.	Payment request letter	EFP/713685	17.04.2017
13.	Payment request Reminder 1	REMINDER1/713685	09.05.2017
14.	Payment	EFP/713685-PR-	04.10.2017



	request letter	0/20171004165347269	
15.	Payment request letter	EFP/713685-PR-0/20171031175248745	31.10.2017
<b>2018</b>			
16.	Payment request letter	EFP/713685-PR-0/20180105171729698	05.01.2018

IX. Furthermore, the delivery of possession was also subject to the *force majeure* circumstances as under clause 11(b)(i) and clause 27 of the Buyer's Agreement which are reiterated hereunder:

**Clause 11(b)(i) of the Agreement:**

*If, the completion of the building including the Unit is delayed due to force majeure reasons then the Allottee(s) agrees that the Company shall be entitled to the extension of time for handing over the possession of the said Unit.....*

**Clause 27 of the Agreement:**

*"The handover of the Unit shall be subject to force majeure clause which, inter alia, includes delay on account of non-availability of steel and/or cement and/or other building materials, water supply or electric power or slow down strike or due to a dispute with the construction agency employed by the Company, civil commotion or by reasons of war, enemy action, earthquake or any act of God. If there is any delay in the delivery of possession of the Unit or the Company is unable to deliver possession of the Unit due to a force majeure event or due to any notice, order, rule or notification of the Central or State Government and/or any other public or competent authority or for any other reason beyond the control of the Company, shall be entitled to a reasonable extension of the time for delivery of possession of the Unit. The Lessee understands and acknowledges that if due to any force majeure conditions, the whole or part of the Project is abandoned or abnormally delayed, the Lessee shall not be entitled to prefer any claim whatsoever except that the Company shall on demand refund the Lessee's money."*

X. 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 taken from the judgment of **Deepak Kumar v. State of Haryana, (2012) 4 SCC 629**, where the competent authorities took substantial time in framing the rules in case where the process the availability of building materials including sand which was an important raw material for development of the said Project became scarce. 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 02.11.2015, 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 of Punjab & Haryana and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity

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not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was almost for 2 (Two) 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 of the project 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 complainant and demanding the prices only as and when the construction was being done.

- XI. It is to be noted that the development and implementation of the said project have been hindered on account of several orders/directions passed by various authorities/forums/courts, before passing of the subjective due date of offer of possession. They have been delineated hereinbelow:

S. no.	Date of Order	Directions	Period of Restriction	Days affected	Comments
1.	07.04.2015	National Green Tribunal had directed that old diesel vehicles (heavy or light) more than 10 years old would not be permitted to ply on	7 <sup>th</sup> of April, 2015 to 6 <sup>th</sup> of May, 2015	30 days	The aforesaid ban affected the supply of raw materials as most of the contractors / building material suppliers used diesel

		<p><b>the roads of NCR, Delhi.</b> It has further been directed by virtue of the aforesaid order that all the registration authorities in the State of Haryana, UP and NCT Delhi would not register any diesel vehicles more than 10 years old and would also file the list of vehicles before the tribunal and provide the same to the police and other concerned authorities.</p>			<p>vehicles more than 10 years old. The order had abruptly stopped movement of diesel vehicles more than 10 years old which are commonly used in construction activity. The order had completely hampered the construction activity.</p>
2.	19.07.2016	<p>National Green Tribunal in O.A. No. 479/2016 had directed that no stone crushers be permitted to operate unless they take consent from the State Pollution Control Board, no objection from the concerned authorities and have the Environment Clearance from the competent Authority.</p>	<p>Till date the order in force and no relaxation has been given to this effect.</p>	30 days	<p>The directions of NGT were a big blow to the real estate sector as the construction activity majorly requires gravel produced from the stone crushers. The reduced supply of gravels directly affected the supply and price of ready mix concrete required for construction activities.</p>



3.	<b>08.11.2016</b>	National Green Tribunal had directed all brick kilns operating in NCR, Delhi would be prohibited from working for a period of one week from the date of passing of the order. It had also been directed that no construction activity would be permitted for a period of one week from the date of order.	08.11.2016 to 15.11.2016	<b>7 days</b>	The bar imposed by Tribunal was absolute. The order had completely stopped construction activity.
4.	<b>07.11.2017</b>	Environment Pollution (Prevention and Control Authority) had directed to the closure of all brick kilns, stones crushers, hot mix plants, etc. with effect from 07.11.2017 till further notice.	<b>Till date the order has not been vacated</b>	<b>90 days</b>	The bar for the closure of stone crushers simply put an end to the construction activity as in the absence of crushed stones and bricks carrying on of construction were simply not feasible. The respondent eventually ended up locating alternatives with the intent of expeditiously concluding construction



					<p>activities but the previous period of 90 days was consumed in doing so. The said period ought to be excluded while computing the alleged delay attributed to the Respondent by the Complainant. It is pertinent to mention that the aforesaid bar stands in force regarding brick kilns till date is evident from orders dated 21.12.2019 and 30.01.2020.</p>
5.	09.11.2017 and 17.11.2017	National Green Tribunal has passed the said order dated 09.11.2017 completely prohibiting the carrying on of construction by any person, private, or government authority in NCR till the next date of hearing (17.11.2017). By virtue of the said	The order dated 09.11.2017 was vacated vide order dated 17.11.2017.	<b>9 days</b>	<p>On account of passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.</p>

		Order, NGT had only permitted the competition of interior finishing/interior work of projects.			
			<b>Total days</b>	<b>166 days</b>	

- XII. That 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 aforesaid 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 computation of due date of possession, as has been provided in the Buyer's Agreement.
- XIII. 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 respondent as per Clause 11(b), 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.

- XIV. 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. The respondent applied for Occupation Certificate in respect of the said unit on 20.07.2020. 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. The grant of sanction of the Occupation Certificate is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence.
- XV. That thereafter, the complainant was offered possession of the unit in question through letter of offer of possession dated 17.11.2020 and the complainant was called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit in question to the complainant.
- XVI. That at this stage, it needs to be categorically noted that after the offer of possession was made, the respondent has been continuously requesting the complainant to fulfil the necessary formalities and take the possession of the unit. However, despite multiple requests and reminders by the respondent, the complainant has failed to fulfil her obligation as per the Builder Buyer's Agreement as well as her statutory obligation. It is submitted that due to the lackadaisical approach of the complainant, the respondent was constrained to issue possession

reminders dated 10.12.2020, 28.12.2020, notice letter for possession dated 12.01.2021 and final notice for possession dated 11.02.2021, despite of which, the complainant failed to oblige her obligations as per the Buyer's Agreement and failed to take the possession of the said unit.

- XVII. That the respondent earnestly requested the complainant to obtain possession of the unit in question and further requested the complainant to execute a conveyance deed after completing all the formalities regarding delivery of possession. The instant complaint is preferred in complete contravention of complainant's earlier representations and documents executed in this regard.
- XVIII. Therefore, the complainant is not entitled to contend that the alleged period of delay continued even after receipt of offer for possession when the complainant herself has delayed in making the payments as stated above. 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.
- XIX. That it is submitted that the allegations of the complainant that possession was to be delivered by March, 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 March, 2014. Infact, the last payment was received from the Complainant on 29.01.2018, if there was infact a delay in delivery of project as

- alleged by the complainant, then the complainant would not have remitted instalments after March, 2014. The allegations put forth by the complainant qua the respondent are absolutely illogical, irrational and irreconcilable in the facts and circumstances of the case.
- XX. 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. 1,45,394/- on account of Anti-Profiting and an amount of Rs.5,60,638/- 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.
- XXI. That despite offering the possession of the unit, the complainant failed to take the possession of the said unit. Moreover, in order to prolong the said matter, the complainant issued a false and frivolous legal notice to the respondent. It is submitted that the said legal notice was duly replied by the respondent vide its reply dated 24.08.2022. That the complainant was called upon to clear the outstanding dues and other charges as per the statement of accounts and to take the possession of the said unit and further to get the conveyance deed executed but the complainant paid no heed to the requests raised by the respondent.
- XXII. It is submitted that the total sale consideration of the said unit is Rs. 1,24,98,558/- excluding stamp duty, registration charges etc. That



as per the statement of account, there are outstanding dues of Rs. 88,138/- towards the principal outstanding amount and further an amount of Rs.2,62,445/-is outstanding towards holding charges. Over and above the said amount, the complainant is further liable to pay the Stamp Duty @ 5% i.e., Rs.5,51,450/- along with Rs.50,003/- towards E-Challan in order to get the conveyance/sale deed executed. It is submitted that the respondent issued multiple payment request letters but no heed was given towards payment of said outstanding amounts and all the efforts have got in vain.

- XXIII. That it is submitted that the complainant is a defaulting party 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 herself has defaulted in making timely payments.
- XXIV. That moreover, without accepting the contents of the complaint in any manner whatsoever, and without prejudice to the rights of the respondent, it needs to be categorically noted that the respondent has already credited compensation of Rs.5,60,638/- and various credit memos against Anti Profiting have been issued for Rs.39,759; Rs.8,590; and Rs.97,045, as evident from the statement of accounts annexed. Without prejudice to the rights of the respondent, delayed interest, if any has to be calculated only on the amounts deposited by the complainant towards the basic principal amount of the unit in question.

7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and written submissions made by the parties and who reiterated their earlier version as set up in the pleadings.

**E. Jurisdiction of the authority**

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

**E.I Territorial jurisdiction**

9. 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**

10. 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)**

**Section 11**

.....  
(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations

*made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

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

**F. Findings on the objections raised by the respondent:**

**F.1 Objections regarding force majeure circumstances.**

12. The respondents-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as orders passed by National Green Tribunal to stop construction and development activities, restrictions on usage of water. The plea of the respondent regarding various orders of the NGT and all the pleas advanced in this regard are devoid of merit. The orders passed by NGT banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

**F. II. Objection regarding allottee is an Investor not Consumer.**

13. The respondent has taken a stand that the complainant is investor and not consumer, therefore, she is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumer of the real estate sector. The authority observed that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainant is a buyer and has paid total price of **Rs. 1,24,10,420/-** to the promoter towards purchase of an unit in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

*"2(d) 'allottee' in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or*

*otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

14. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement cum provisional allotment letter executed between promoter and complainants, it is crystal clear that they are allottee(s) as the subject unit allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee being investor is not entitled to the protection of this Act also stands rejected.

**F. Findings of the authority on relief sought by complainant.**

**F.I. Delayed possession charges.**

15. In the present complaint, the complainant is seeking delayed possession charges along with interest on the amount paid. Clause 11 (a) of the flat buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below: -

*"11. 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*

*Floor within 24 months from the date of execution of Buyers Agreement. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of 3 (three) months, for applying and obtaining the completion certificate/occupation certificate in respect of the floor and/or the Project."*

15. The present 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 complainant 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.

19. **Admissibility of delay possession charges at prescribed rate of interest:** 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.*

18. The legislature in its wisdom in the subordinate legislation under 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.
19. 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., **08.05.2024** is 8.85%. Accordingly, the prescribed rate of interest will be MCLR +2% i.e., 10.85%.
20. The definition of term 'interest' as defined under section 2(z a) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest

which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

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

*Explanation. —For the purpose of this clause—*

*(i) the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default;*

*(ii) the interest payable by the promoter to the allottees shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottees to the promoter shall be from the date the allottees defaults in payment to the promoter till the date it is paid;"*

21. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
22. 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 builder buyer agreement. That the BBA was executed between the parties on 20.03.2012 and the due date of possession is 24 months from the date of execution of the agreement. So the authority calculated the due date from i.e.,20.03.2012. The period of 24 months expired on 20.03.2014 also it was subject to a grace period of three months. Therefore, the due date of handing over possession is 20.06.2014. The respondent did not offer possession of the subject



unit on time. It is the failure of the respondent /promoter to fulfil its obligations and responsibilities as per the builder buyer's agreement to hand over the possession within the stipulated period. Also, the respondent in its reply on page no. 17 para 26 have clearly mentioned that the respondent has credited an amount of Rs.5,60,638/- as compensation on account of the delay caused.

23. 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., 20.06.2014 till offer of possession plus 2 months after obtaining occupation certificate from the competent authority, as per section 18(1) of the Act 2016 read with Rule 15 of the Rules. Also, the amount of Rs.5,60,638 /- so paid by the respondent towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act

**F.II. Declare the offer of possession dated 17.11.2020 illegal, void.**

23. The authority is of the view that the respondent has issued the offer of possession to the complainant on 17.11.2020 after obtaining the occupation certificate on 11.11.2020 from the competent authority. Thus, the offer of possession is a valid offer of possession and cannot be called void, illegal.

**F.III. Direct the charges demanded towards delayed payment, registration charges and advance maintenance to be null, void**

and further settle the charges already taken towards administrative and miscellaneous charges.

**F.IV Direct the respondent to not charge holding charges, maintenance charges, till the handing over of delivery of the apartment, complete in all respects, to the complainant.**

- **Delayed Payment charges**

24. Section 19(6) of the Act states that every allottee, who has entered into an agreement for sale, to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale/the builder buyer's agreement and shall pay within stipulated time and appointed place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent and other charges, if any.

25. 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 respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

- **Registration Charges**

26. With respect to the contention of the allottee regarding demand of administrative and incidental charges, the authority is of the view that the charges which have to be essentially paid by the allottee to the government/statutory bodies for getting the transfer/conveyance registered in its name and those charges are



recoverable for which official receipt is issued by such government/statutory body. A similar view has been taken by the Panchkula Authority *in complaint no. 2223 of 2019 in Amit Mehra Vs. Piyush Buildwell India Ltd.* along with connected matters.

27. The administrative registration of property at the registration office is mandatory for execution of the conveyance (sale) deed between the developers (seller) and the homebuyer (purchaser). Besides the stamp duty, homebuyers also pay for execution of the conveyance/sale deed. This amount, which is given to developers in the name of registration charges, is significant and the amount can be as steep as ₹25,000 to ₹80,000. In a circular issued on 02.04.2018, the DTP's office fixed the registration charges per flat at ₹15,000 in furtherance to several complaints received from homebuyers that developers charge 1.5% of the total cost of a property in the name of administrative property registration charge. The authority considering the pleas of the developer-promoter is of the view that a nominal amount of up to Rs.15000/- may be charged by the promoter - developer for any such expenses which it may have incurred for facilitating the said transfer as has been fixed by the DTP office in this regard. For any other charges like incidental and of like nature, since the same are not defined and no quantum is specified in the builder buyer's agreement, therefore, the same cannot be charged.

- **Advance Maintenance Charges**

28. The authority deems fit that the respondent is right in demanding advance maintenance charges at the rate prescribed therein at the time of offer of possession. However, the respondent shall not demand the advance maintenance charges for more than one (1) year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year. Thus, the respondent can only charge AMC upto one year only.

- **Holding Charges**

29. It has been clearly held in the matter of *Varun Gupta vs. Emaar MGF Land Limited Cr/4031/2019*, that the respondent/promoter cannot levy holding charges and the same has been held in *Capital Green Flat Buyer Association & Ors vs. DLF Universal Ltd. CC No.351 of 2015* (Para 36), which has also been upheld by the Hon'ble Supreme Court of India in CA No. 3864-3889/2020.

30. Thus, the respondent/promoter is directed not to impose holding charges on the complainant/allottee. In case any amount is paid by the complainant/allottee in view of the same, it should be adjusted by the respondent/promoter.

**F.V Direct the respondent to refund the amount of GST, VAT, service tax and other charges wrongly collected from the Complainant alongwith interest and also directed to not collect security amount towards VAT security for the period of April 2014 to June 2017.**

- **GST**

31. The authority has held in *Varun Gupta V. Emaar MGF Land Limited CR/4031/2019*, that where the due date of possession is prior to the coming into force of the GST Act, 2017, the complainant is not liable to incur any additional financial burden of the GST.
32. The authority is of the view that the respondent has arbitrarily levied GST on amounts payable by the complainant. Thus, the complainant is entitled to refund of the said GST which has been demanded by the respondent and paid by the complainant.
- **VAT demands**
33. The promoter is entitled to charge VAT from the allottee for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT) under the amnesty scheme. The promoter shall not charge any VAT from the allottees/prospective buyers during the period 01.04.2014 to 30.06.2017 since the same was to be borne by the promoter-developer only. The respondent-promoter is directed to adjust the said amount, if charged from the allottee with the dues payable by the allottee or refund the amount if no dues are payable by the allottee.

**F.VI. Direct the respondent to not to force the complainant to sign any indemnity cum undertaking document.**

34. The respondent is directed not to place any condition or ask the complainants to sign an indemnity of any nature whatsoever, which is prejudicial to their rights as has been decided by the authority in

complaint bearing no. **4031 of 2019 titled as Varun Gupta V. Emaar MGF Land Ltd.**

**F.VII. Direct the respondent to pay an amount of Rs.30,00,000/- towards mental agony and harassment suffered by the complainant at the hands of the respondent on account on non-delivery of possession of the apartment to the complaint.**

35. The complainant is seeking the above mentioned relief w.r.t. compensation. The Hon'ble Supreme Court of India in Civil Appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Ltd. V/s State of UP & Ors.(supra)* has held that an allottee is entitled to claim compensation and litigation charges 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 and litigation expense shall be adjudged by the adjudicating officer having due regards to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation and legal expenses. Therefore, the complainant may approach the adjudicating officer for seeking the relief of compensation.

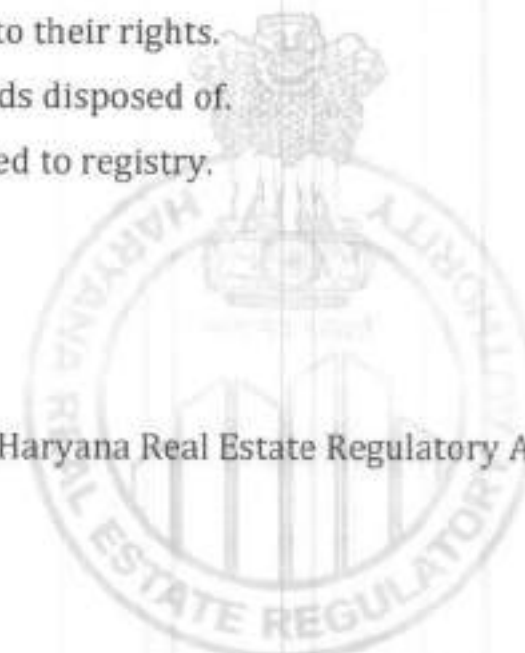
#### **G. Directions of the authority**

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



- i. The respondent is directed to pay interest at the prescribed rate of 10.85% p.a for every month of delay from the due date of possession i.e., 20.06.2014 till offer of possession plus 2 months after obtaining occupation certificate from the competent authority, as per section 18(1) of the Act 2016 read with Rule 15 of the Rules.
- ii. Also, the amount of Rs.5,60,638 /- so paid by the respondent towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act
- iii. The complainant is direct to pay the outstanding dues, if any. 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 respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- iv. The respondent is directed to charge amount of up to Rs.15000/- for any expenses which it may have incurred for facilitating the transfer as has been fixed by the DTP office in this regard.
- v. The respondent/promoter is directed not to impose holding charges on the complainant/allottee.
- vi. The respondent is directed not to demand the advance maintenance charges for more than one (1) year from the allottee.
- vii. The respondent is directed not to charge any VAT from the allottees/ during the period 01.04.2014 to 30.06.2017 since the same was to be borne by the promoter-developer only.

- viii. The respondent has arbitrarily levied GST on amounts payable by the complainant. Thus, the respondent is directed to refund the said GST which has been demanded by the respondent and paid by the complainant.
- ix. The respondent is directed not to place any condition or ask the complainants to sign an indemnity of any nature whatsoever, which is prejudicial to their rights.
37. Complaint stands disposed of.
38. File be consigned to registry.



**(Ashok Sangwan)**  
Member  
Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 08.05.2024

**HARERA**  
GURUGRAM