

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

**Complaint no.** : 1163 of 2023  
**Date of order** : 10.04.2024

Kaveri Anand  
**R/o:** Ivory 170, Ground Floor,  
Emerald Hills, Sector-65, Gurugram.

**Complainant**

**Versus**

M/s Emaar MGf Land Limited  
**Office at:** - Ece House, 28 Kasturba Gandhi Marg,  
New Delhi-110001.

**Respondent**

**CORAM:**  
Shri. Ashok Sangwan

**Member**

**APPEARANCE:**  
Shri. Sukhbir Yadav (Advocate)  
Shri. Dhruv Rohtagi (Advocate)

**Complainant  
Respondent**

**ORDER**

1. The present complaint dated 16.03.2023 has been filed by the complainant/allottee 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 under the provision of the Act or the rules and regulations



made thereunder or to the allottee as per the agreement for sale executed inter se.

**A. Unit and project related details**

2. The particulars of unit details, 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 Hills", Sector 65, Gurugram, Haryana
2.	Nature of the project	Residential
3.	Project Area	102.7412 acres
4.	DTCP license no.	10 of 2009 dated 21.05.2009 Valid up to 20.05.2019
5.	Unit no.	EFS-B-I-GF-170, Floor-Ground, Block/Building No.-Ivory (As on page no. 38 of complaint)
6.	Unit area	3400 sq.ft. [Super-Area] (As on page no. 38 of complaint)
7.	Date of execution of buyer's agreement dated	19.04.2012 (As on page no. 35 of complaint)
8.	Possession clause	<b>13. 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</i>

		<p><i>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 <b>within 24 months from the start of construction</b>. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of <b>3 (three) months, for applying and obtaining the completion certificate/occupation certificate in respect of the floor and/or the Project.</b></i></p> <p>(Emphasis supplied)                  (As on page no. 55 of complaint)</p>
9.	Due date of possession	19.08.2016 [Calculated 24 months from date of start of construction i.e 19.08.2014] [Note: Grace period is not included]
11.	Total sales consideration	Rs.2,37,81,240 /- (As per S.O.A dated 13.08.2019 on page no. 165 of complaint)
12.	Total amount paid by the complainant	Rs. 2,37,81,240 /- (As per S.O.A dated 13.08.2019 on page no. 165 of complaint)
13.	Occupation certificate	13.04.2019 (As on page no. 147 of reply)

14.	Offer of possession	29.12.2018 (As on page no. 116 of complaint)
15.	Indemnity cum undertaking	13.04.2023 (As on page no. 160 of complaint)
16.	Unit hand over letter	07.05.2019 (As on page no. 163 of complaint)
17.	Conveyance deed	21.05.2019 (As on page no. 134 of complaint)

**B. Facts of the complaint**

3. The complainant has made the following submission: -

- I. That the complainant is a law abiding and peace loving citizen and the project in question is known as "Emerald Floors Select" situated in Sector-65, Urban Estate, Gurugram.
- II. That in December 2011, the complainant received a marketing call from the office of the respondent regarding a residential project being developed by the respondent in the name of "Emerald Floors Select", Sector-65, Urban Estate, Gurugram. Thereafter, the complainant visited the office of the respondent and the project site along with her family members. The marketing staff of the respondent allured the complainant with a rosy picture of the project. The marketing staff of the respondent assured the complainant that the respondent will handover the possession of the units in time.

- III. Relying on the representation and assurances of the respondent, the complainant booked a unit and made an application in regard to it on 31.12.2011. The complainant also paid a sum of Rs.15,00,000/- on account of the booking amount.
- IV. That on 24.02.2012, the complainant received a welcome letter along with a provisional allotment letter. As per the said allotment letter a unit bearing no. EFS-B-1-GF-170 admeasuring 3400 sq.ft. was allotted to the complainant. It is pertinent to mention here that the said unit was booked under the instalment/construction link payment plan for a total sale consideration of Rs.2,30,23,522/- including Basic sale price, EDC and PLC, etc as per the payment plan attached with the allotment letter.
- V. That on 19.04.2012, a Builder Buyer's Agreement was executed between the parties. According to possession clause 13 (a) of the Buyer's Agreement, the respondent has to give possession of the flat within a period of 24 months from the date of start of the construction. It is relevant to mention here that the construction of the said project commenced on 19.08.2014, therefore, the due date of possession was on or before 19.08.2016.
- VI. That on 29.12.2018, the respondent issued an offer of possession letter along with the statement of account concerning the complainant's unit i.e., EFS-B-1-GF-170. It is pertinent to mention here that the Respondent demanded Rs.26,64,976/- under different heads, that included several illegal demands i.e. Rs.28,320/- electricity connection on charges, Rs.66867/- electrification charges, Rs.325/- sewerage connection

charges, Rs. 4101/- water connection charges, etc. It is further pertinent to mention here that as per the said statement of account, the respondent has already collected a sum of Rs.2,31,32,561/- i.e., more than 100% of total sale consideration from the complainant. It is pertinent to mention here that the respondent acknowledged the delay in delivery of possession and credited Rs.3,23,501/- on account of compensation on issuance of offer of possession.

- VII. That the complainant had visited the project site after receiving the offer of possession and found that there are several deficiencies in the structure, workmanship, and finishing. Upon inspection of the unit, the complainant noticed that one of the beams situated between the basement and ground floor levels in the back portion had been wrongly cast and the color of the tiles is also different.
- VIII. That the complainant sent an email/letter to the respondent containing all her grievances and also asked to provide the occupancy certificate in the said letter since the said offer of possession does not have a copy of the occupancy certificate attached/annexed with it. It is highly pertinent to mention here that the respondent party has issued the offer of possession after the expiration of the due date. Therefore, the complainant asked the respondent to pay the delay possession interest since the possession was offered after a delay of almost 2.5 years, however, the respondent chose to remain silent and has not given any response to genuine and actual demands of the complainant. Moreover, the respondent has charged delay payment charges which are not acceptable at all as the complainant has been fulfilling

all the demands of the respondent timely, and only 2 payments were get delayed and that too was the fault of the respondent because the complainant wished to take a loan, however, no lender was willing to give money to the complainant because no work was being carried out by the respondent and when the respondent started the construction, the lenders got ready to lend the money to the complainant. It is highly pertinent to mention here that the respondent has promised to waive off all the delayed payment charges which were unnecessarily charged with the intention to grab the money from the complainant. That on 28.01.2019, the complainant sent an email to the respondent with a Grievance Letter and Site visit letter mentioning the willingness to pay the amount under protest and asked for delayed possession interest and rectification of structural defects.

IX. That on 26.02.2019 the complainant sent an email to the Respondent stating that

*“ We had received a letter of offer of pocession for our unit EFS-B-I-GF-170 at the end of Dec 2018 requesting us to pay the last instalment. We followed by sending a letter of grievances and made 4 visits on various occasions to follow up on such grievances and also discuss issues relating to our unit. Despite numerous promises being made by the customer relationship department headed by Ms. Reena Gulati and having spoken to her personally too, no issues were resolved and yet the letters demanding for the installment and adding interest to such amount kept being sent to us.*

*On our last visit to your office in Sikanderpur on 21/2/19 where we requested to meet Reena Gulati to discuss the issues once again and make the payment on the last instalment, we were made to wait for 45 minutes but she did not meet us. Mr. Mohit Anand then promised me that Reena Gulati would call us by the end of the day so we could sort out the matter but we received no such call from her. The next day at around*

*Midday, we got a call from Mohit Anand that the Letter of Offer of Possession in our case had been erroneously generated and that the Occupation Certificate had not been received yet, still, Reena Gulati still did not bother to call us as promised.*

*We would like to know how a company the size of Emaar could make such an elementary error of sending the letter of offer of Possession when it had not received an Occupation Certificate. We have not received any further communication as to when the OC is being received and possession being offered to us. It seems all Emaar does is manufacture one lie after another and then dare to say that they want to bring smiles on their customer's face.*

*This whole episode has led to severe mental stress. And also, to further draw down on our unutilised amount of our mortgage to pay the last instalment resulting in higher EMI's on my mortgage.*

*I would like to know how is it that Emaar unilaterally makes these demands and exactions on their customers whilst not delivering on their part. Pursuant to your promise of possession, I went ahead and gave notice to my landlord of vacation of my rented premises w.e.f. March 31, 2019.*

*I would like to get an audience with your senior most management as it seems that all the people that I have met have no authority to make any promises and do not take any responsibility for their words and actions." . It is pertinent to mention here that on 01.03.219, the Respondent sent an email retreated that "the intimation of Possession for the captioned unit was generated due to a system error. We have rectified the error and would like to assure you that such miscommunication shall not be taking place as we value your relationship and investment with us"*

- X. That it is pertinent to mention here that the respondent had assured the complainant that all her grievances shall be resolved and asked to take possession of the unit. The complainant believing in the words of the respondent made the payment against the demand raised by the respondent in the statement of account dated 29.12.2018 and took possession of the unit.



- XI. That on 20.04.2019, a conveyance deed was executed in the name of the complainant. The respondent never discussed/negotiated the terms of the conveyance deed and asked the complainant to sign on the pre-printed draft, therefore, under the compelling circumstances the complainant signed the conveyance deed.
- XII. Thereafter, on 07.05.2019, the respondent issued the Unit Handover Letter in the name of the complainant. On 23.05.2019, the complainant again sent an email to the respondent and asked to resolve all the issues pertaining to the structural deficiencies and the statement of account, however, all went in vain.
- XIII. That on 13.08.2019, the respondent issued an updated statement of account in the name of the complainant. It is pertinent to mention here that the complainant has not waived off the delayed payment charges as promised by itself and also, the respondent has charged various unnecessary charges i.e., VAT and GST. It is highly germane to mention here that as per the said statement of account, the complainant has paid Rs.2,42,48,732/- and the respondent has collected more than 100% of the sale consideration. It is further pertinent to mention here that the respondent has called Rs.12,25,210/- in excess and the complainant has paid the same because it was the only option left to the complainant to get the possession of her unit.
- XIV. That it is crucial to bring the fact into the knowledge of the authority that the complainant wanted to take legal action against the respondent, therefore the

complainant had approached an advocate namely Mr. Tushar Bhamani earlier in 2019, submitted all the documents and asked him to file the complaint. It is relevant to mention here that the said complaint was registered but not filed by Mr. Tushar Bhamani, Advocate due to the pandemic Covid-19 and any other reason, best known to him. However, the complaint had been registered by him since the performa-B has been generated of the said complaint. It is further essential to mention here that the said complaint was registered under the title "Kaveri Anand Vs. Emaar MGF Land Ltd" and the registration no. is RERA-GRG-564-2019.

- XV. That, since December 2018 the complainant was contacting the respondent telephonically and visiting and made efforts to get the delayed possession interest of the allotted flat/apartment but all went in vain. Despite several telephonic conversations and requests & personal site visits by the complainant, the respondent has not taken even a single request of the complainant in its consideration. It is pertinent to mention here that the respondent has neither paid delayed possession interest nor removed the structural deficiencies after taking possession of the unit.
- XVI. That the main grievance of the complainant in the present complaint is that despite having paid more than 100% of the actual cost of the flat, the respondent delivered the possession of the flat but with various defects like different coloured tiles, sharp-edged tiles and the beams installed in the back portion are also not fit and same are sagging.

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

4. The complainant has sought following relief(s):
  - i. Direct the respondent to pay delayed possession charges interest from the due date of possession till the actual handing over of possession.
  - ii. Direct the respondent to refrain from imposing penalty on delayed payments.
  - iii. Direct the respondent to provide a copy of the Occupation certificate.
  - iv. Direct the respondent to rectify the defects-structural, finishing and workmanship as mentioned in the E-mails.
  - v. Direct the respondent to refund under different heads, i.e., Rs.28,320/- Electricity Connection charges, Rs.66,867/- Electrification charges, Rs.325/- Sewerage Connection Charges, Rs.4,101/- water connection.
  - vi. Direct the respondent not to charge VAT and GST charges.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions 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 by the respondent.**

6. The respondent has contested 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 as well as an incorrect understanding of the terms and conditions of the Buyer's Agreement dated 19.04.2012.
  - II. That the complainant is estopped by her own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. It is submitted that the complainant has been enjoying the said unit without any demur/protest. That the possession was offered on 29.12.2018 and the

unit was handed over on 07.05.2019 and thereafter, the conveyance deed was executed on 21.05.2019. The lack of bonafide of the complainant is apparent as after conclusion of the entire transaction i.e. on the execution of the conveyance deed and the completion of all obligations of the respondent, she chose to remain silent for such a unreasonably long period and has approached this authority with the intent to extort money. The complainant never thought of raising any claim towards delay possession charges and was agreeable to the compensation so awarded.

- III. The respondent has credited a sum of **Rs. 5,25,492/-** as benefit as compensation for the delay in offering of the possession of the unit. Hence, it is clear from the lack of any documentary proof, whereby the complainant may have raised any such additional claim or if she may have been dissatisfied with the already awarded compensation. Thus, it is abundantly clear that the execution of Conveyance Deed was without any undue influence and coercion. Even otherwise, the unit handover letter dated 07.05.2019, clearly records ***“Upon acceptance of possession, the liabilities and obligations of the Company as enumerated in the allotment letter/ Agreement executed in favour of the Allottee stand satisfied”***. Thus, the respondent is discharged of all liabilities, including the claim of delay possession charges. The present complaint is an afterthought with malafide intent to enrich herself. Mere allegation of coercion does not suffice. There is nothing on record to suggest that there was any coercion or undue influence at the time of handing over of the possession. The said allegation is nothing but an afterthought. It is a settled law that a party alleging Fraud/ undue influence or coercion has to prove the same. The said view was also taken by the Hon'ble Supreme

Court in the case of **Bellachi Vs Pakeeran, in SLP (Civil) No. 5238 of 2008**, Judgment dated **23.03.2009**, wherein it was held that :

*"The law does not envisage raising of a presumption in favour of undue influence. A party alleging the same must prove the same subject of course to just exceptions."*

IV. Now, at this stage, the complainant is estopped in law and in facts to raise any new allegations. Moreover, In the matter of **Bachhaj Nahar v Nilima Mandal & Ors**, which was decided by **Hon'ble Supreme Court** on 23.09.2008, **MANU/SC/8199/2008**, the ratio decidendi of the judgment is as follows:

*"When neither party puts forth a contention, then court cannot obviously make out such a case not pleaded, suo moto."*

*"8. The High Court, in this case, in its obvious zeal to cut delay and hardship that may ensue by relegating the plaintiffs to one more round of litigation, has rendered a judgment which violates several fundamental rules of civil procedure. The rules breached are:*

*(i) No amount of evidence can be looked into, upon a plea which was never put forward in the pleadings. A question which did arise from the pleadings and which was not the subject matter of an issue, cannot be decided by the court.*

*(ii) A Court cannot make out a case not pleaded. The court should confine its decision to the question raised in pleadings. Nor can it grant a relief which is not claimed and which does not flow from the facts and the cause of action alleged in the plaint.*

*10. The object of issues is to identify from the pleadings the questions or points required to be decided by the courts so as to enable parties to lead evidence thereon. When the facts necessary to make out a particular claim, or to seek a particular relief, are not found in the plaint, the court cannot focus the attention of the parties, or its own attention on that claim or relief, by framing an appropriate issue.*

V. In a recent judgment of **HRERA, Panchkula**, in the case titled **Alka Sibbal Vs Countrywide Promoters Pvt. Ltd.**, bearing Complaint No. **328 of 2021**, decided on , **17.08.2022**, it has been held that, "

*After hearing submissions of both parties and perusing relevant record, Authority in consonance with the principles laid down in order dated 27.04.2022 passed in Complaint*

no. 367/2021 mentioned herein above, observed that as of today, contractual obligations between parties stand discharged. Handing over of lawful possession and execution of conveyance deed brings contractual relationship between the parties to an end. Thereafter only certain statutory rights like rectification of defects or satisfactory maintenance etc will survive. Permitting reopening of concluded contracts will not be in public interest. It will lead to endless litigation. Therefore, Authority reiterates its prima facie views already expressed in order dated 03.02.2022 and decides to dismiss the present complaint. Accordingly, these complaints are dismissed."

Further, **Section 11(4)** of Act, 2016 also clearly states as under:-

*"(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:*

*Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed."*

- VI. 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 this Authority and can only be adjudicated by the civil court. Therefore, the present complaint deserves to be dismissed on this ground alone.
- VII. That the complainant is not an "Allottee" but Investor who has booked the apartment as a speculative investment in order to earn rental income/profit from its resale and not for the purpose of self-use as her residence. Therefore, no equity lies in favour of the complainant.

- VIII. That since, the complainant was irregular in payment of instalments which is why the respondent was constrained to issue reminders and letters to the complainant requesting her to make payment of demanded amounts. It is relevant to note that the default and delay in remitting the payments has also been admitted by the complainant in her complaint.
- IX. It is submitted that the complainant consciously and maliciously chose to ignore the payment request letters and reminders issued by the respondent and flouted in making timely payments of the instalments which was essential, crucial and an indispensable requirement under the Buyer's Agreement. Furthermore, when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially and further causes enormous business losses to the respondent.
- X. That clause 15(c) of the Buyer's Agreement provides that compensation for any delay in delivery of possession shall only be given to such Allottees who are not in default of their obligations envisaged under the Buyer's Agreement and who have not defaulted in payment of instalments as per the payment plan incorporated in the Buyer's Agreement. In case of delay caused due to non-receipt of occupation certificate, completion certificate or any other permission/sanction from the competent authorities, no compensation or any other compensation shall be payable to the allottees. That the complainant having defaulted in payment of instalments, is thus not entitled to any compensation or any amount towards interest under the Buyer's Agreement. It is submitted that the complainant by way of instant complaint is demanding interest for alleged delay in delivery of possession. The interest is compensatory in nature and cannot be granted in derogation and ignorance of the provisions of the Buyer's Agreement.

- XI. It is further submitted that the respondent applied for Occupation Certificate on 04.02.2019 and the same was thereafter issued on 03.04.2019. It is pertinent to note that once an application for grant of Occupation Certificate is submitted for approval in the office of the concerned statutory authority, respondent ceases to have any control over the same. The grant of sanction of the Occupation Certificate is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence.
- XII. That, without admitting or acknowledging the truth or legality of the allegations advanced by the complainant and without prejudice to the contentions of the respondent, it is respectfully submitted that the provisions of the Act are not retrospective in nature.
- XIII. That the construction of the project/allotted unit in question already stands completed and the respondent has already offered possession of the unit in question to the complainant and the Conveyance Deed has also been executed. The transaction between the parties is a concluded contract and as such no right to sue survives.
- XIV. 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.
- XV. That it is pertinent to mention that after execution of the unit handover letter dated 07.05.2019 and obtaining of possession of the unit in question, the complainant is left with no right, entitlement or claim against the respondent. It needs to be highlighted that the complainant has further



executed a conveyance deed dated 21.05.2019 in respect of the unit in question.

- XVI. Further, the respondent 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 riverbed. These orders infact 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. Further, the parties have agreed that in the event of delay, the allottee shall be entitled to compensation on the amounts paid by the allottee, which shall be adjusted at the time of handing over of possession/execution of conveyance deed

subject to the allottee not being in default under any of the terms of the Buyer's Agreement.

7. 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 submission made by the parties.

**E. Jurisdiction of the authority**

8. The respondent has raised a preliminary objection/submission that the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of the complaint on ground of jurisdiction stands rejected. The authority observes 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)**

*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.

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

**F.1 Whether the complainant can claim delayed possession charges after execution of the conveyance deed .**

12. The respondent stated that the complainant has alleged that possession of the unit was to be given not later than November, 2016 and therefore the cause of action, if any, accrued in favour of the complainant in 2016. Also, that the conveyance deed of the unit has already been executed in favour of the complainant on 21.05.2019. The transaction between the parties stands concluded upon the execution of conveyance deed.
13. It had been contended by the respondent that on execution of the conveyance deed, the relationship between both the parties stands concluded and no right or liabilities can be asserted by the respondent or the complainant against the other. Therefore, the complainant is stopped from claiming any interest in the facts and circumstances of the case.
14. It is important to look at the definition of the term "deed" itself in order to understand the extent of the relationship between the allottee and the promoter. A deed is a written document or an instrument that is sealed, signed, delivered by all the parties to the contract i.e., buyer and seller. It is a contractual document that includes legally valid terms and is enforceable in a court of law. It is mandatory that a sale deed should be in writing and

both the parties involved must sign the document. Thus, a conveyance deed is essentially one wherein the seller transfers all rights to legally own, keep and enjoy a particular asset, immovable or movable. In this case, the assets under consideration are immovable property. On signing a conveyance deed, the original owner transfers all legal rights over the property in question to the buyer, against a valid consideration usually monetary. Therefore, a "conveyance deed" or "sale deed" implies that the seller signs a document stating that all authority and ownership of the property in question has been transferred to the buyer.

15. From the above it is clear that on execution of a sale/conveyance deed, only the title and interest in the said immovable property (herein the allotted unit) is transferred. However, the conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the said unit whereby the right, title and interest has been transferred in the name of the allottee on execution of the conveyance deed.
16. The allottee has invested her hard-earned money and there is no doubt that the promoter has been enjoying benefits of and the next step is to get her title perfected by executing the conveyance deed which is the statutory right of the allottee. Also, the obligation of the developer-promoter does not end with the execution of a conveyance deed. Therefore, in furtherance to the Hon'ble Apex Court judgement and the law laid down in case titled as ***Wg.Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd. (now known as BEGUR OMR Homes Pvt. Ltd.) and Ors. (Civil appeal no. 6239 of 2019) dated 24.08.2020***, the relevant paras are reproduced herein below:

*"34 The developer has not disputed these communications Though these are four communications issued by the developer, the appellants submitted that they are not isolated aberrations but fit into the pattern. The developer does not state that it was willing to offer*

*the flat purchasers possession of their flats and the right to execute conveyance of the flats while reserving their claim for compensation for delay. On the contrary, the tenor of the communications indicates that while executing the Deeds of Conveyance, the flat buyers were informed that no form of protest or reservation would be acceptable. The flat buyers were essentially presented with an unfair choice of either retaining their rights to pursue their claims (in which event they would not get possession or title in the meantime) or to forsake the claims in order to perfect their titles to the flats for which they have paid valuable consideration. In this backdrop, the simple question which we need to address is whether a flat buyer who espouses a claim against the developer for delayed possession can as a consequence of doing so be compelled to defer the right to obtain a conveyance to perfect their title. It would, in our view, be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, the purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance to forsake the right to claim compensation. This basically is a position in which the NCDRC has espoused. We cannot countenance that view.*

*35. The flat purchasers invested their hard-earned money. It is only reasonable to presume that the next logical step is for the purchaser to perfect the title to the premises which have been allotted under the terms of the ABA. But the submission of the developer is that the purchaser forsakes the remedy before the consumer forum by seeing a Deed of conveyance. To accept such a construction would lead to an absurd consequence of requiring the purchaser either to abandon a just claim as a condition for obtaining the conveyance or to indefinitely delay the execution of the Deed of Conveyance pending protracted consumer litigation."*

17. The authority has already taken a view in **Cr. No. 4031/2019** and others titled as **Varun Gupta V/s Emaar MGF Land limited and others** and observed that the execution of a conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the subject unit and upon taking possession, and/or executing conveyance deed, the complainant never gave up his statutory right to seek delayed possession charges as per the provisions of the said Act.
18. After consideration of all the facts and circumstances, the authority holds that even after execution of the conveyance deed, the complainant allottee cannot be precluded from his right seek delay possession charges from the respondent-promoter.

**F.II. Whether the complaint is barred by limitation or not?**

19. So far as the issue of limitation is concerned, the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Authority Act of 2016. However, the Authority

under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is universally accepted maxim and the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.

20. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in **MA NO.21 of 2022 of Suo Moto Writ Petition Civil No.3 of 2020** have held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
21. In the present matter the cause of action arose on 07.05.2019 when the possession was handed over to the complainant by the respondent. The complainant has filed the present complaint on 16.03.2023 which is 3 years 10 months and 9 days from the date of cause of action. In the present case the three year period of delay in filing of the case also after taking into account the exclusion period from 15.03.2020 to 28.02.2022 would fall on 28.02.2023. In view of the above, the Authority is of the view that the present complaint has been filed within a reasonable time period and is not barred by the limitation.

### **F.III. Objections regarding force majeure circumstances.**

22. The respondent-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 the NGT to stop construction and development activities, restrictions on usage of water. The plea of 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 basis of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

**F.IV Objection regarding the allottee being an investor not consumer.**

23. The respondent has taken a stand that the complainant is an investor and not consumer. Therefore, she is not entitled to the protection of the Act and also 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 consumers of the real estate sector. The authority observes 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 the preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time the 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 paid total price of **Rs.2,37,81,240** /- to the promoter towards purchase of an apartment in its project. 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;"

24. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment application for allotment, it is crystal clear that the complainants are allottees as the subject unit was 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 protection of this Act also stands rejected.

**G. Findings regarding relief sought by the complainant**

**G. I Direct the respondent to pay the interest at the prescribed rate on the amount paid on account of delay in delivering possession of said apartment.**

25. In the present complaint, the complainant intends to continue with the project and is seeking possession of the unit and delayed possession charges as per section 18(1) of the Act and the same is reproduced below for ready reference:

**"Section 18: - Return of amount and compensation**

**18(1). 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."*

*(Emphasis supplied)*

26. Clause 13(a) of the builder buyer's agreement (in short, the agreement) dated 19.04.2012, provides for handing over possession and the same is reproduced below:

13(a)

***Time of handing over the possession***

*"Subject to terms of this clause and the Allottee(s) having complied with all the terms conditions of this Agreement and not being in default under any of the provisions of Agreement and upon complying with all provisions, formalities, documentation etc prescribed by the Company, the Company shall make all efforts to handover possession of the Floor **within a period of 24 months from the date of commencement of construction**, The Allottee(s) agrees and understands that the Company shall be entitled grace period of three (3) months, for applying and obtaining the occupation certificate in respect of the Floor and/or the Project.*

27. The buyer's agreement was executed on 19.04.2012. As per clause 13 of the agreement the respondent was to offer the possession of the unit to the allottee within 24 months from the date of start of construction. The date of commencement of construction was 19.08.2014 also, the authority is of the view that the grace period of 3 months is allowed. Therefore, the due date comes out to be 19.11.2016.
28. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges 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.*

29. 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.
30. 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., 10.04.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
31. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:
- "(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
- Explanation. —For the purpose of this clause—*
- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*
- (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*
32. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. The authority has observed that the builder buyer agreement was executed on 19.04.2012 and the possession of the subject

unit was to be offered within a period of 24 months plus 3 months from date of commencement of construction. The authority calculated due date of possession from the date of commencement of construction i.e., 19.08.2014 which comes out to be 19.08.2014. As far as grace period is concerned, the same is allowed. Therefore, the due date of handing over possession is 19.11.2016. The respondent has failed to handover possession of the subject unit on the due date. 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. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainant as per the terms and conditions of the agreement to sell dated 19.04.2012 executed between the parties. Further, the authority observes that the respondent obtained the occupation certificate on 03.04.2019 and offered possession to the complainant on 29.12.2018 (prior obtaining the occupation certificate). The unit was handed over to the complainant on 07.05.2019 and conveyance deed was executed on 21.05.2019. During proceedings dated 21.02.2024, the counsel for the respondent stated that the said offer of possession was inadvertently issued to the complainant on 29.12.2018 and was immediately rectified and the same was communicated to the complainant.

33. Accordingly, the non-compliance of the mandate contained in section 11(4) (a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to delay possession charges at rate of the prescribed interest @ 10.85% p.a. w.e.f. 19.11.2016 till actual handing over of possession as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

**G.II. Delay payments penalty and refund of excess money paid to the respondent.**

34. The authority is of the view that after the execution of the conveyance deed between the complainant and the respondent, all the financial liabilities between the parties come to an end except the statutory rights of the allottee. Thus, the authority declines the said reliefs.

**G.III. Direct the respondent to provide a copy of the occupation certificate.**

35. Under section 11(4)(b) of the Act, 2016 the respondent is responsible to obtain the completion certificate or the occupancy certificate, or both from the relevant competent authority and make it available to the allottees individually or to the association of allottees. The relevant clause is reproduced below:

"4 The promoter shall-

b. Be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and make it available to the allottees individually or to the association of allottees, as the case may be ;"

36. Thus, the authority directs the respondent to provide a copy of the occupancy certificate to the allottee within a period of 30 days of this order.

**G.IV. Direct the respondent to rectify structural defects.**

37. Under Section 11(4)(a) of the Act, 2016 the promoter/builder is responsible for all obligations, responsibilities and functions under the Act, 2016 and also under the rules and regulations made under the Act. The promoter/builder is also responsible to the allottees or to the association of allottees, as the case may be as per the agreement for sale till the conveyance of all the apartments to the allottees or the competent authority, as the case may be. Moreover, the responsibility of the promoter with respect to the

structural defects or anyother defect as referred in sub section 3 of section 14 of the Act,2016 continues even after the conveyance deed is executed.

38. Under section 14 clause 3, it is clearly mentioned that if there is any structural or other defect in workmanship, quality or provision of services or other obligations of the promoter as per the agreement for sale relating to development is brought to the notice of the promoter within 5 years from the date of handing over of possession, it shall be duty of the promoter to rectify such defects without any further charge, within 30 days. Relevant clause is reproduced below:

*"Section 14 Adherence to sanctioned plans and project specifications by the promoter  
3. in case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over of possession, it shall be the duty of the promoter to rectify such defects without further charge, within 30 days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act."*

39. Thus in view of the above, the authority directs the respondent/promoter to rectify the structural defects or any other defect in workmanship, quality or provision of services as per the agreement within 30days of this order and in the event the respondent fails to rectify the defects within the said time period, the complainant may approach the Adjudicating Officer and seek compensation for the same.

**H. Directions of the authority: -**

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

- i. The respondent/promoter shall pay interest at the prescribed rate i.e., 10.85% for every month of delay on the amount paid by the



complainant from the due date of possession i.e., 19.11.2016 till the date of handing over of possession after adjustment/deduction of the amount already paid if any towards delay in handing over of possession as per proviso to section 18(1) of the Act read with rule 15 of the rules.

- ii. The respondent is directed to pay arrears of interest accrued, if any, after adjustment in statement of account, within 90 days from the date of this order as per rule 16(2) of the Act.
  - iii. The respondent is directed to provide a copy of the occupancy certificate to the allottee within a period of 30 days of this order.
  - iv. The respondent is directed to rectify the structural defects or any other defect in workmanship, quality or provision of services as per the agreement within 30 days of this order and in the event the respondent fails to rectify the defects within the said time period, the complainant may approach the Adjudicating Officer and seek compensation for the same.
41. Complaint stands disposed of.
42. File be consigned to the registry.

Dated: 10.04.2024

**HARERA**  
**GURUGRAM**

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