

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

Complaint no. : 6767 of 2022  
Complaint filed on : 03.11.2022  
First date of hearing : 21.02.2023  
Date of decision : 31.05.2024

1. Arun Jain  
2. Neelam Jain  
Both RR/o: 10-05, 35 Jurong East Ave-1, Parc Oasis  
Singapore-609775

**Complainants**

Versus

M/s Emaar India Ltd.  
(Earlier known as Emaar MGF Land Ltd.)  
Address: 306-308, 3<sup>rd</sup> floor, Square One,  
C2, District Centre, Saket, New Delhi -110017.

**Respondent**

**CORAM:**

Shri Sanjeev Kumar Arora

**Member**

**APPEARANCE:**

Shri Jagdeep Kumar  
Shri Harshit Batra

Advocate for the complainants  
Advocate for the respondent

**ORDER**

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter se.

**A. Project and unit related details**

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

S.No.	Heads	Information
1.	Project name and location	Gurgaon Greens, Sector 102, Gurugram, Haryana.
2.	Project area	13.531 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	75 of 2012 dated 31.07.2012
	Valid till	30.07.2020
	Name of licensee	Kamdhenu Projects Pvt. Ltd. and another C/o Emaar MGF Land Ltd.
5.	HRERA registered/ <del>not</del> registered	<b>Registered vide no. 36(a) of 2017 dated 05.12.2017 for 95829.92 sq. mtrs.</b>
	HRERA registration valid up to	<b>31.12.2018</b>
	HRERA extension of registration vide	<b>01 of 2019 dated 02.08.2019</b>
	Extension valid up to	<b>31.12.2019</b>
6.	Unit no.	GGN-17-1001, 10th floor, building no. 17 [page 36 of complaint]
7.	Unit measuring (super area)	1650 sq. ft. [page 36 of complaint]
8.	Allotment letter dated	28.01.2013 (page no. 21 of complaint)
9.	Date of execution of buyer's agreement	11.04.2013 [page 33 of complaint]
10.	Possession clause	<b>14. POSSESSION</b>

		<p><b>(a) Time of handing over the Possession</b></p> <p><i>Subject to terms of this clause and barring force majeure conditions, subject to the Allottee having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Unit within <u>36 (Thirty Six) months from the date of start of construction</u>, subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the Company shall be entitled to a <u>grace period of 5 (five) months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project.</u></i></p> <p>(emphasis supplied)                  [page 49 of complaint]</p>	
11.	Date of start of construction as per statement of account dated 25.02.2020 at page 86 of complaint	14.06.2013	
12.	Due date of possession	14.06.2016 [Note: Grace period is not included]	
13.	Total consideration	As per statement of account dated 25.02.2020 at page 86 of reply	As per payment plan annexed with the buyer's agreement

		Rs.1,24,85,084/-	Rs.1,20,38,641/-
14.	Total amount paid by the complainants as per statement of account dated 25.02.2020 at page 86 of complaint	Rs.1,24,85,082/-	
15.	Occupation certificate	05.12.2018 (page 128 of reply)	
16.	Offer of possession	12.12.2018 (page no. 131 of complaint)	
17.	Unit handover letter dated	21.1.2019 (page no. 142 of complaint)	
18.	Conveyance deed executed on	29.01.2019 (page no. 143 of reply)	

**B. Facts of the complaint**

3. The complainants made following submissions in the complaint:
4. That somewhere in the month of August 2012, the respondent through its business development associate approached them with an offer to invest and buy a flat in the proposed project of the respondent. On 30.08.2012, the complainants had a meeting with respondent where the respondent explained the project details and highlighted the amenities of the project like joggers park, joggers track, rose garden, 2 swimming pool, amphitheater and many more. Relying on these details, the complainants enquired about the availability of flat on 10<sup>th</sup> in tower 17 which was a unit consisting area of 1650 sq. ft. It was represented to the complainants that the respondent has already processed the file for all the necessary sanctions and approvals from the appropriate and concerned authorities for the development and completion of said project on time with the promised quality and specification. The

respondent had also shown the brochures and advertisement material of the said project to them and assured that the allotment letter and builder buyer agreement for the said project would be issued to them within one week of booking to made by them. The complainants, relying upon those assurances and believing them to be true, booked a residential flat bearing no. 1001 on 10<sup>th</sup> floor in tower - 17 in the proposed project of the respondent measuring approximately super area of 1650 sq. ft. Accordingly, they have paid Rs. 7,50,000/- as booking amount on 30.08.2012.

5. That on 28.01.2013, approximately after five months, the respondent issued a provisional allotment letter containing very stringent and biased contractual terms which are illegal, arbitrary, unilateral and discriminatory in nature because every clause was drafted in a one-sided way and a single breach of unilateral terms of provisional allotment letter by the complainants, will cost them forfeiture of 15% of total consideration value of unit. Respondent exceptionally increased the net consideration value of flat by adding EDC, IDC and PLC and when complainants opposed the unfair trade practices of respondent, they were informed that EDC, IDC and PLC are just the government levies, and they are as per the standard rules of government. Further, the delay payment charges will be imposed @ 24% which is standard rule of company and company will also compensate at the rate of Rs. 7.50/- per sq. ft. per month in case of delay in possession of flat by company. Complainants opposed these illegal, arbitrary, unilateral and discriminatory terms of provisional allotment letter but there was no other option left with them because if they stop the further payment of

installments then in that case, respondent may forfeit 15% of total consideration value from the total amount paid by them. Thereafter, on 11.04.2013, the buyer's agreement was executed on similar illegal, arbitrary, unilateral and discriminatory terms narrated by respondent in provisional allotment letter.

6. That as per the clause 14 of the buyer's agreement dated 11.04.2013, the respondent had agreed and promised to complete the construction of the said flat and deliver its possession within a period of 36 months with a five (5) months grace period thereon from the date of start of construction. The proposed possession date as per buyer's agreement was due on 14.06.2016. However, the respondent has breached the terms of said buyer's agreement and failed to fulfill its obligations and has not delivered possession of said flat within the agreed time frame of the buyer's agreement.
7. That as per annexure-III (Schedule of Payments) of buyer's agreement, the total sale consideration of the said flat was Rs.1,16,11,283/- (exclusive of service tax and GST but includes the charges towards the basic price- Rs.97,00,383/-, car parking Rs.3,00,000/-, Governmental charges (EDC & IDC) Rs.5,70,900/-, club membership Rs.50,000/-, IFMS Rs.82,500/-, PLC for Green Rs. 2,47,500/-, PLC corner Rs. 1,65,000/-, PLC for central green Rs. 4,95,000/- ). But later at the time of possession, the respondent increased the sale consideration to Rs.1,16,41,376/- without any reason for the same, and respondent also charged IFMS @ Rs.82,500/- separately, whereas IFMS charges were already included in sale consideration and that way respondent charged IFMS twice from complainants. In total, the respondent

- increased the sale consideration by Rs.1,12,593/- (Rs.30,093/- + Rs.82,500/-) without any reason which is illegal, arbitrary, unilateral and unfair trade practice. Complainants opposed the increase in sales consideration at time of possession, but respondent did not pay any attention towards their claims.
8. That as per the statement dated 25.02.2020, issued by the respondent, the complainants have already paid Rs.1,24,85,356/- towards total sale consideration as demanded by the respondent from time to time and now nothing is pending to be paid on the part of complainants. Although the respondent charges Rs. 1,12,593/- extra from complainant.
  9. That the possession was offered by respondent through "Intimation of Possession" was not a valid offer of possession because respondent offered the possession on dated 12.12.2018 with stringent condition to pay certain amounts which were never part of agreement. At the time of offer of possession, builder did not adjusted the penalty for delay possession.
  10. That the respondent demanded Rs.1,44,540/- towards two-year advance maintenance charges from complainants which was never agreed under the buyer's agreement and respondent also demanded a lien marked FD of Rs. 2,92,457/- on pretext of future liability against HVAT which are also unfair trade practice.
  11. That respondent left no other option to complainants, but to pay the payment of two-year maintenance charges Rs. 1,44,540/- and fixed deposit of Rs.2,92,457/- with a lien marked in favour of Emaar MGF Land Limited and Rs.2,92,457/- towards e-stamp duty and Rs.45,000 towards registration charges of above said unit in addition to final

- demand raised by respondent along with offer of possession. Respondent gave physical handover of aforesaid property on 21.01.2019.
12. That the GST Tax which has come into force on 01.07.2017, it is a fresh tax. The possession of the apartment was supposed to be delivered to complainants on 14.06.2016, therefore, the tax which has come into existence after the due date of possession (14.06.2016) of flat, this extra cost should not be levied on complainants, since the same would not have fallen on the complainants if respondent had offer the possession of flat within the time stipulated in the agreement.
  13. On 21.01.2019, the complainants informed the respondent telephonically that respondent is creating anomaly by not compensating the complainants for delay possession charges at the rate of interest specified in the RERA Act. The complainants made it clear to the respondent that if it does not compensate them for delay possession interest then they will approach the appropriate forum to get redressal. Whenever complainants enquired about the delay possession charges, the respondent made excuses of getting approval from Directors, but till date the respondent has not credited the delay possession interest.
  14. That the respondent has acted in a very deficient, unfair, wrongful, fraudulent manner by not delivering the said flat within the timelines agreed in the agreement and otherwise. The cause of action accrued in the favour of the complainants and against the respondent on 30.08.2012 when the said flat was booked by them, and it further arose when respondent failed/ neglected to deliver the said flat on proposed



delivery date. The cause of action is continuing and is still subsisting on day-to-day basis.

**C. Relief sought by the complainants**

15. The complainants have filed the present compliant for seeking following relief:
- i. Direct the respondent to pay interest at the rate of 18% on account of delay in offering possession on amount paid by the complainants from the date of payment till the date of delivery of possession.
  - ii. Direct the respondent to return Rs.1,12,593/- unreasonably charged by respondent by increasing sale price after execution of buyer's agreement.
  - iii. Direct the respondent to return entire amount paid as GST tax by complainant between 01.07.2017 to 28.12.2018.
  - iv. Direct the complainant's bank to remove the lien marked over Fixed Deposit of Rs 2,92,457/- in favour of respondent on the pretext of future payment of HVAT for the period of (01.04.2014 to 30.06.2017) and also order to direct the respondent to assist the process of removing lien from complainant's bank by providing NOC for the same.
  - v. Direct the respondent to pay an amount of Rs.55,000/- to the complainants as cost of the present litigation.
16. 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 and to plead guilty or not to plead guilty.

**D. Reply by the respondent**

17. The respondent has raised certain preliminary objections and has contested the present complaint on the following grounds:
18. That the complainants are not Allottees but investors who have booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale.
19. That the complainants vide application form dated 16.08.2012 applied to the respondent for provisional allotment of the unit. The apartment no. GGN-17-1001, located on 10<sup>th</sup> floor, Tower 17 admeasuring 1650 sq. ft. was allotted vide allotment letter dated 28.01.2013. The complainants had opted for a construction linked payment plan. Thereafter, the buyer's agreement was executed between the complainants and the respondent on 11.04.2013.
20. That as per clause 14(a) of the Agreement, the due date of possession was subject to the allottees having complied with all the terms and conditions of the Agreement. That being a contractual relationship, reciprocal promises are bound to be maintained.
21. That the complainants had defaulted/delayed in making the due payments, upon which, reminders were also served to the complainants and had paid delayed payment interest at multiple occasions.
22. 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.
23. The completion of the project delayed due to various force majeure conditions such as the directions of the Hon'ble Supreme Court of India,

regarding mining activities of minor minerals, framing of modern mineral concession rules, the process the availability of building materials including sand which was an important raw material for development of the said project became scarce. Further, the respondent was faced with certain other force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc.

24. That the respondent applied for occupation certificate in respect of the said unit on 13.04.2018 and the same was thereafter issued vide memo bearing no. 33193 dated 05.12.2018. 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.
25. That the complainants were offered possession of the unit in question through letter of offer of possession dated 12.12.2018. The complainants were 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 complainants. The complainants delayed the procedure of taking the possession of the said unit on their own account.

26. 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. 73,326/- towards Anti-Profiting and an amount of Rs. 3,08,799/- as compensation to the complainants on account of the delay caused due to the default of the complainants in timely remittance of instalments and due to the reasons beyond the control of the respondent.
27. That the respondent earnestly requested the complainants to obtain possession of the unit in question and further requested the complainants to execute a conveyance deed in respect of the unit in question after completing all the formalities regarding delivery of possession. However, the complainants did not pay any heed to the legitimate, just and fair requests of the respondent and threatened the respondent with institution of unwarranted litigation.
28. That thereafter, an indemnity cum undertaking for possession dated 09.01.2019 of the said unit was executed between the complainants and the respondent for use and occupation of the said unit whereby the complainants have declared and acknowledged that they have no ownership right, title or interest in any other part of the project except in the unit area of the unit in question. The instant complaint is preferred in complete contravention of their earlier representations and documents executed.
29. That the complainants did not have adequate funds to remit the balance payments requisite for obtaining possession in terms of the buyer's agreement and consequently in order to needlessly linger on the matter, the complainants refrained from obtaining possession of the unit in

- question. The complainants finally took the possession of the unit on 21.01.2019 and consequently, the conveyance deed was executed on 29.01.2019.
30. That in accordance with the facts and circumstances noted above, the present claim is barred by limitation. The Article 113 of Schedule I of the Limitation Act is applicable and the present complaint was filed after over 6 years of passing of limitation, which cannot be condoned under any circumstance whatsoever.
  31. That moreover, after the execution of the conveyance deed, the contractual relationship between the parties stands fully satisfied and comes to an end. That there remains no claim/ grievance of the complainants with respect to the Agreement or any obligation of the parties thereunder.
  32. That an amount of Rs. 1,12,593/- that has been charged from the complainant in lieu of other charges which includes electrification charges, water connection charges, sewerage connection charges, electric meter charges, storm water connection charges, piped gas connection charges etc., registration charges and administrative charges, in terms with the buyer's agreement.
  33. That the inception of GST w.e.f. 01.07.2017 is not a new law but transformation/ reorganization and conglomeration of two already existing taxes i.e. VAT and Service Tax. The allottees are burdened with new tax liabilities in the form of GST but the allottees are only paying up the taxes under the new regime. The allottees are also being forwarded the benefits of anti-profiteering and input tax credit in the GST regime.

34. 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.

**E. Jurisdiction of the authority**

35. 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**

36. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana 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**

37. Section 11(4)(a) of the Act 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) *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;*

***Section 34-Functions of the Authority:***

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

38. 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 as per provisions of section 11(4)(a) of the Act 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.I Objection regarding entitlement of DPC on ground of complainants being investors**

39. The respondent submitted that the complainants are investor and not consumer/allottee, thus, the complainants are not entitled to the protection of the Act and thus, the present complaint is not maintainable.
40. The authority observes 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 and 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 under section 31 of the Act, 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 buyer's agreement, it is revealed that the complainants are an allottee/buyer and they have paid total price of Rs.1,18,69,510/-

to the promoter towards purchase of the said 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;"*

41. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between respondent and complainants, 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 complainants-allottees being investors are not entitled to protection of this Act stands rejected.

**G. Findings on the reliefs sought by the complainants**

**G.1 Direct the respondent to pay interest at the rate of 18% on account of delay in offering possession on amount paid by the complainants from the date of payment till the date of delivery of possession.**



42. In the present complaint the complainant booked a unit bearing no. GGN-17-1001, 10<sup>th</sup> floor, building no. 17 admeasuring 1650 sq. ft. in the project of the respondent company namely "Gurgaon Greens " situated at Sector-102 Gurugram. The allotment letter for the said unit was issued on 28.01.2013. Thereafter, a buyer's agreement dated 11.04.2013 was executed between the parties regarding the said unit for a total sale consideration of Rs.1,24,85,084/- and the complainant has fully paid a sum of Rs.1,24,85,082/-against the same.
43. The complainant has stated that as per clause 14(a) of the buyer's agreement the possession of the unit was to be handed over within 36 months from the date of start of construction. The date of start of construction is 14.06.2013, therefore the due date comes out to be 14.06.2016. The occupation certificate of the project was received on 05.12.2018 and subsequently the unit was offered to the complainants on 12.12.2018. Hence, the respondent should pay the interest on the amount paid by them on account of delay in offering possession.
44. The respondent asserted the said plea of the complainants and stated that the said complaint is not maintainable as the occupation certificate was received on 05.12.2018 and the unit was offered on 12.12.2018 thereafter the unit was handed over to the complainants on 21.01.2019 and the conveyance deed was also got executed between the parties on 29.01.2019. After the execution of conveyance deed, the relationship between both the parties' stands concluded and no right or liabilities can be asserted by the respondent or the complainants against the other. Therefore, the complainants are estopped from claiming any interest in the facts and circumstances of the case. Moreover the

respondent has credited an amount of Rs. 73,326/- towards Anti-Profiting and an amount of Rs. 3,08,799/- as compensation to the complainants on account of the delay caused due to the conditions beyond the control of respondent.

45. The authority after considering documents held on record observes that it is important to look at the definition of the term 'deed' itself in order to understand the extent of the relationship between an allottee and promoter. A deed is a written document or an instrument that is sealed, signed and delivered by all the parties to the contract (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 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.
46. 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 statutory 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.

47. The authority has already taken a view in in *Cr no. 4031/2019 and others tiled 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.
48. 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 to seek delay possession charges from the respondent-promoter.
49. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Proviso to section 18(1) reads as under:

***"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."***

50. Clause 14(a) of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

**"14. POSSESSION**

**(a) Time of handing over the possession**

*Subject to terms of this clause and barring force majeure conditions, and subject to the Allottee having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company. The Company proposes to hand over the possession of the Unit within 36 (Thirty Six) months from the date of start of construction, subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the Company shall be entitled to a grace period of 5 (five) months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project."*

51. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainants not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment time period for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their 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.

52. **Due date of possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 36 (thirty-six) months from the date of start of construction and further provided in agreement that promoter shall be entitled to a grace period of 5 months for applying and obtaining completion certificate/occupation certificate in respect of said unit. The date of start of construction is 14.06.2013 as per statement of account dated 25.02.2020 at page 86 of complaint. The period of 36 months expired on 14.06.2016. As a matter of fact, the promoter has not applied to the concerned authority for obtaining completion certificate/ occupation certificate within the time limit (36 months) prescribed by the promoter in the buyer's agreement. The promoter has moved the application for issuance of occupation certificate only on 13.04.2018 when the period of 36 months has already expired. As per the settled law one cannot be allowed to take advantage of his own wrong. Accordingly, the benefit of grace period of 5 months cannot be allowed to the promoter due to aforesaid reasons.
53. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the rate of 18%. 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.*

54. 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.
55. Taking the case from another angle, the complainants-allottees were entitled to the delayed possession charges/Interest only at the rate of Rs.7.50/- per sq. ft. per month of the super area as per clause 16 of the buyer's agreement for the period of such delay; whereas, as per clause 13 of the buyer's agreement, the promoter was entitled to interest @ 24% per annum at the time of every succeeding instalment from the due date of instalment till date of payment on account for the delayed payments by the allottee. The functions of the authority are to safeguard the interest of the aggrieved person, may be the allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of his dominant position and to exploit the needs of the home buyers. This authority is duty bound to take into consideration the legislative intent i.e., to protect the interest of the consumers/allottees in the real estate sector. The clauses of the buyer's agreement entered into between the parties are one-sided, unfair and unreasonable with respect to the grant of interest for delayed possession. There are various other clauses in

the buyer's agreement which give sweeping powers to the promoter to cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the buyer's agreement are ex-facie one-sided, unfair and unreasonable, and the same shall constitute the unfair trade practice on the part of the promoter. These types of discriminatory terms and conditions of the buyer's agreement will not be final and binding.

56. 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., 31.05.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

57. **Rate of interest to be paid by the complainants in case of delay in making payments-** 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;"*

58. Therefore, interest on the delay payments from the complainants 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 complainants in case of delayed possession charges.

59. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 14(a) of the buyer's agreement executed between the parties on 11.04.2013, the possession of the subject flat was to be delivered within a period of 36 months from the date of start of construction plus 5 months grace period for applying and obtaining the completion certificate/ occupation certificate in respect of the unit and/or the project. The construction was started on 14.06.2013. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 14.06.2016. Occupation certificate was granted by the concerned authority on 05.12.2018 and thereafter, the possession of the subject flat was offered to the complainants on 12.12.2018. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject flat and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 11.04.2013 to hand over the possession within the stipulated period.
60. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was



granted by the competent authority on 05.12.2018. The respondent offered the possession of the unit in question to the complainants only on 12.12.2018, so it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. These 2 months' of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 14.06.2016 till the expiry of 2 months from the date of offer of possession (12.12.2018) which comes out to be 12.02.2019.

61. 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 complainants are entitled to delayed possession at prescribed rate of interest i.e. 10.85 % p.a. w.e.f. 14.06.2016 till 12.02.2019 as per provisions of section 18(1) of the Act read with rule 15 of the rules.
62. Also, the amount of Rs.3,08,799/- (as per statement of account dated 14.08.2023) so paid by the respondent to the complainants 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.

- G.II Direct the respondent to return Rs.1,12,593/- unreasonably charged by respondent by increasing sale price after execution of buyer's agreement.
- G.III Direct the respondent to return entire amount paid as GST tax by complainant between 01.07.2017 to 28.12.2018.
- G.IV Direct the complainant's bank to remove the lien marked over Fixed Deposit of Rs 2,92,457/- in favour of respondent on the pretext of future payment of HVAT for the period of (01.04.2014 to 30.06.2017) and also order to direct the respondent to assist the process of removing lien from complainant's bank by providing NOC for the same.
63. As far as common issues with regard to increase in sale price, HVAT and GST are concerned, 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. It is important to note that the purchaser will not lose their right to claim compensation for delayed handing over of possession.
- G.V Direct the respondent to pay an amount of Rs.55,000/- to the complainants as cost of the present litigation.
64. The complainant in the aforesaid relief is seeking relief w.r.t compensation Hon'ble Supreme Court of India, in case titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled for claiming compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned


in section 72. Therefore, the complainants are at liberty to approach the adjudicating officer for seeking compensation.

**H. Directions of the authority**

65. 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 the interest at the prescribed rate i.e. 10.85% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 14.06.2016 till 12.02.2019 i.e. expiry of 2 months from the date of offer of possession (12.12.2018).
- ii. Also, the amount of Rs.3,08,799/- 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 arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per rule 16(2) of the rules.
- iv. 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.

- v. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.
66. Complaint stands disposed of.
67. File be consigned to registry.

  
(Sanjeev Kumar Arora)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 31.05.2024



**HARERA**  
GURUGRAM