

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

Date of decision: 16.04.2024

NAME OF THE BUILDER			M/s Emaar Mgf Land Ltd.
PROJECT NAME:			APPEARANCE
1	CR/5604/2022	Mrs. Jyotsna Kumar V/s Emaar India Ltd	Sh. Jagdeep kumar Sh. Ishaan Dang
2	CR/6123/2022	Jagmohann Mittal and Ritu Mittal V/s Emaar India Ltd	Sh. Jagdeep kumar Sh. Ishaan Dang

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Chairman
Member
Member
Member

ORDER

1. This order shall dispose of all the 2 complaints titled as above filed before this authority in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the

projects, namely, 'Gurgaon Greens' being developed by the same respondent promoters i.e., M/s Emaar Mgf Land Ltd. The terms and conditions of the builder buyer's agreements that had been executed between the parties inter se are also almost similar. The fulcrum of the issue involved in all these cases pertains to failure on the part of the respondent/promoter to deliver timely possession of the units in question, seeking award for delayed possession charges, return amount by increasing sale price after buyer's agreement, hvat, GST etc.

3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

1	2	3	4	5	6	7	8
Sr. No	Complaint No. Title Date of filing	Reply status	Unit No.	Date of agreement	Due date of possession	Offer of possession	Relief Sought
1	CR/5604/2022 Mrs. Jyotsna Kumar V/s Emaar India Ltd 25.08.2022	Reply Received	GGN-07-0702 (page no. 38 of the complaint)	12.06.2013 (page no. 35 of the complaint) Conveyance deed : 28.03.2019 (Page 149 of reply)	14.11.2016	11.12.2018 (Page 139 of reply)	1. Direct the respondent to pay interest @ of 18% of delay in offering possession from the date of payment till the date of delivery of possession. 2. Direct the respondent to return Rs. 1,12,593/- amount unreasonably charged by respondent by increasing sale price after execution of buyer's agreement between the complainant and the respondent. 3. Direct the respondent to return Rs. 4,95,000/- for reducing the size of central greens from 8 acres to 1.22 Acres. 4. Direct the respondent to return entire amount paid as GST tax by complainant between 01.07.2017 to 24.07.2019 5. Direct the complainant's bank to remove the lien marked over fixed deposit of Rs. 3,63,586/- dated 21.01.2019 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 direct the respondent to assist the process of removing lien from

2.	CR/6123/2022 Jagmohan Mittal and Ritu Mittal V/s Emaar India Ltd 21.09.2022	Reply Received	GGN-03-0401 (page no.40of the complaint)	09.04.2013 (page no. 37 of the complaint) Conveyance deed : 10.09.2019 (Page 163 of reply)	28.11.2016	18.07.2019 (Page 152 of reply)	<p>complainant's bank by providing noc for the same .</p> <p>6. Direct the respondent to pay an amount of Rs. 55,000/- to the complainants as cost of the present litigation.</p> <p>1. Direct the respondent to pay interest @ of 18% of delay in offering possession from the date of payment till the date of delivery of possession.</p> <p>2. Direct the respondent to return Rs. 1,12,576/- amount unreasonably charged by respondent by increasing sale price after execution of buyer's agreement between the complainant and the respondent.</p> <p>3. Direct the respondent to return entire amount paid as GST tax by complainant between 01.07.2017 to 24.07.2019.</p> <p>4. Direct the complainant's bank to remove the lien marked over fixed deposit of Rs. 2,29,992/- 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 direct the respondent to assist the process of removing lien from complainant's bank by providing noc for the same .</p> <p>5. Direct the respondent to pay an amount of Rs. 55,000/- to the complainants as cost of the present litigation.</p>
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4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties inter se in respect of said units for not handing over the possession by the due date. In some of the complaints, issues other than delay possession charges in addition or independent issues have been raised and consequential reliefs have been sought.
5. The delay possession charges to be paid by the promoter is positive obligation under proviso to section 18(1) of the Act in case of failure of

the promoter to hand over possession by the due date as per builder buyer's agreement.

6. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the Act, the rules and the regulations made thereunder.
7. The facts of all the complaints filed by the complainants/ allottees are also similar. Out of the above-mentioned cases, the particulars of lead case CR/5604/2022 at serial no. 1 titled as Mrs. Jyotsna Kumar V/s Emaar India Ltd are being taken into consideration for determining the rights of the allottees qua delay possession charges, return amount by increasing sale price after buyer's agreement, hvat, GST etc etc.

A. Unit and project related details

8. The particulars of unit details, 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:

CR/5604/2022

Sr. No.	Particulars	Details
1.	Name of the project	Gurgaon Greens, Sector 102, Gurugram, Haryana
2.	Rera registered / Not registered	Registered vide no. 36(a) of 2017 dated 05.12.2017
3.	RERA registration valid up to	31.12.2019

4.	Unit no.	GGN-07-0702, 7 th floor, building no. 7 measuring 1650 sq. ft. [page 38 of complaint]
5.	Provisional allotment letter	27.01.2013 [page 22 of complaint]
6.	Date of execution of buyer's agreement	12.06.2013 [page 35 of complaint]
7.	Possession clause	<p>14. POSSESSION</p> <p><i>(a) Time of handing over the Possession</i></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 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.</i></p>

		(Emphasis supplied) [page 51 of complaint]
8.	Date of start of construction as per statement of account dated 19.09.2022 at page 128 of reply	14.06.2013
9.	Due date of possession	14.11.2016
10.	Total consideration as per statement of account dated 19.09.2022 at page 128 of reply	₹ 1,26,33,530/-
11.	Total amount paid by the complainants as per statement of account dated 19.09.2022 at page 128 of reply	₹ 1,26,38,745/-
12.	Occupation certificate	05.12.2018 [page 136 of reply]
13.	Offer of possession	11.12.2018 [page 139 of reply]
14.	Unit handover letter	22.03.2019 [page 148 of reply]
15.	Conveyance deed executed	28.03.2019 [page 149 of reply]
14.	Delay compensation paid to the complainant as per statement of account dated 19.09.2022 at page 128 of reply	₹ 3,07,171/-

B. Facts of the complaint

The complainant has submitted as under:

- That somewhere in the month of august 2012, the respondent through its business development associate approached the complainant with

an offer to invest and buy a unit in the proposed project of respondent, which the respondent was going to launch the project namely "Gurgaon Greens" in the Sector-102, Gurugram.

10. That on 29.08.2012 the complainant had a meeting with respondent at the branch office of "Emaar business park, Mg Road, Sikanderpur Chowk, Sector 28, Gurugram 122002" where the Respondent explain the project details of "Gurgaon Greens" and highlight the amenities of the project (gurgoan greens) like joggers park, joggers track, rose garden, 2 swimming pool, amphitheatre and many more and told that tower 07, 08, 14, 25, and 26 is only available for advance booking and each tower will have G+13 floors and on every 13th floor of these towers there will be a penthouse which possessing floor no 12 and 13th floor, on relaying on these details complainant enquire the availability of flat on 7th floor in Tower 07 which was a unit consisting area 1650 sq ft. and assured that the allotment letter and the builder buyer agreement for the said project would be issued to the complainant within one week of booking to made by the complainant. The complainant while relying upon those assurances and believing them to be true, the complainant booked a residential unit bearing No. 0702 on 7th floor in tower - 07 in the proposed project of the respondent measuring approximately super area of 1650 Sq. ft. (153.29 Sq. meter) in the township to be developed by the respondent. Accordingly the complainant has paid Rs. 7,50,000/- through cheque bearing No 104562 dt 29/08/2012 as booking amount on 29.08.2012.
11. That in the said application form, the price of the said unit was agreed at the rate of Rs. 6124/- per sq. ft .At the time of execution of the said application form, it was agreed and promised by the respondent that there shall be no change, amendment or variation in the area or sale

price of the said unit from the area or the price committed by the respondent in the said application form or agreed otherwise. Approximately after five months on 27.01.2013 the respondent issued a provisional allotment letter. The respondent exorbitantly increased the net consideration value of unit by adding EDC, idc and plc and when the complainant opposed the unfair trade practices of respondent they inform that EDC, idc and plc are just the government levies and they are as per the standard rules of government and these are just approximate values which may come less at the end of project and same can be proportionately adjusted on prorata basis and about the delay payment charges of 24% they said this is standard rule of company and company will also compensate at the rate of Rs 7.5 per sq ft per month in case of delay in possession of flat by company. Thereafter on 12.06.2013 builder buyer agreement was executed between the parties.

12. That as per the clause - 14 of the said buyer's agreement dated 12.06.2013, the respondent had agreed and promise to complete the construction of the said unit and deliver its possession within a period of 36 months with a five months grace period thereon from the date of start of construction. 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 unit within the agreed time frame of the builder buyer agreement. The proposed possession date as per buyer's agreement was due on 14.06.2016. From the date of booking 29.08.2012 and till 11.12.2018, the respondent had raised various demands for the payment of installments on complainant towards the sale consideration of said unit and the complainant have duly paid and satisfied all those demands as per the flat buyers agreement.

13. That as per annexure-III schedule of payments of the buyer's agreement the sales consideration for said unit was Rs. 1,17,68,033/- (which includes the charges towards basic price - Rs 1,01,04,633/-, Govt Charges (EDC & idc) - 5,70,900/-, club membership - Rs. 50,000/-, ifms - Rs 82,500/-, CAR PARK - Rs 3,00,000/-, plc for corner Rs 1,65,000/-, and plc for central green - Rs 4,95,000/-) exclusive of service tax and GST, but later at the time of possession the respondent added Rs 30093/- in sale consideration and increase sale consideration to Rs. 1,17,98,126/- without any reason for the same and respondent also charge ifms Rs 82500 separately, whereas ifms charges already included in sale consideration and that way respondent charge ifms twice from the residents. The respondent increased the sale consideration by Rs. 1,12,593/- (Rs. 30093 + Rs. 82500) without any reason, which is a illegal, arbitrary, unilateral and unfair trade practice. The complainant opposed the increase in sales consideration at time of possession but respondent did not pay any attention to the complainant.
14. That the complainant has paid the entire sale consideration along with applicable taxes to the respondent for the said unit. As per the statement dated 28.07.2022, issued by the respondent, upon the request of the complainant, the complainant have already paid Rs. 1,23,31,574 /- towards total sale consideration and applicable taxes as on today to the respondent as demanded time to time and now nothing is pending to be paid on the part of Complainant. Although the respondent charges Rs. 1,12,593/- extra from the complainant. On the date agreed for the delivery of possession of said unit as per date of booking and later on according to the buyer agreement, the

- complainant had approached the respondent and its officers for inquiring the status of delivery of possession but met with no response.
15. That the offer of possession offered by the respondent through "intimation of possession" was not a valid offer of possession because the respondent offered the possession on dated 11.12.2018 with stringent condition to pay certain amounts which are never be a part of agreement and respondent did not even receive the completion certificate of various other towers of the project and as on 11.12.2018 project was delayed approx two years and six months. The respondent also demanded an indemnity-cum-undertaking along with final payment, which is illegal and unilateral demand. The respondent did not even allow complainant to visit the property at "Gurgaon Greens" before clearing the final demand raised by respondent along with the offer of possession. The respondent demanded two year advance maintenance charges from complainant which was never agreed under the buyer's agreement and respondent also demanded a lean marked fd of Rs. 3,63,586/- in pretext of future liability against hvat (for the period of 01.04.2014 to 30.06.2017) which is also a unfair trade practice. The respondent left no other option to the complainant, but to pay the payment of two year maintenance charges Rs. 1,44,540/- and submit a fixed deposit of Rs. 3,03,586/- with a lien marked in favour of Emaar mgf land limited and Rs. 3,31,950/- towards e-stamp duty and Rs. 50,000/- towards registration charges of above said unit no. 0702, Tower 07, Gurgaon Greens in addition to final demand raised by respondent along with the offer of possession. Respondent gave the physical handover of aforesaid property on date 22.03.2019.
16. That after taking possession of the unit on 22.03.2019 complainant also identify that some major structural changes were done by respondent



- in project "Gurgaon Greens" in comparison to features of project narrated to complainant on 29.08.2012, area of central park was told 8 acre, but in reality area of central green is 1.82 acre and in comparison of promised area of 8 acres, there is a clear shortfall of 6.18 acres of space in central greens area and above all the view of major portion of central greens is also restricted due to design of staircase of tower no. 7. The proportionate claim for 6.18 Acres of shortfall is Rs 382,387/- (considering plc for 8 acre central greens = Rs. 4,95,000/-)
17. That the respondent charge exceptionally high plc from complainant without even transferring the ownership rights of amenities to complainant on the common area of project. The respondent compelled almost every flat owner (total 672) through unilateral buyer's agreement to pay plc of Rs. 4,95,000/- for central park whereas respondent sell car parking of Rs 3,00,000/- each underneath central park, this way respondent sell same area twice to residents and collect exceptionally high and unilateral and unjustified plc from complainant. The respondent only spread grass on roof of covered parking area and sell it as "central green" at exceptionally high rate .The respondent did not provide the final measurement of above said unit no. 0702, Tower NO. 07, "Gurgaon Greens". The respondent charge all idc, EDC and plc and maintenance as per area of unit as 1650 sq ft but there is no architect confirmation provided by the respondent about the final unit area which respondent was going to handover to the complainant.
18. 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 complainant on 14.06.2016, therefore, the tax which has come into existence after the due date of possession (14 June 2016) of flat, this extra cost should not be levied on complainant, since the same would

not have fallen on the complainant if respondent had offer the possession of unit within the time stipulated in the builder buyer agreement.

19. That the respondent got the conveyance deed executed on 28.03.2019 and the present complaint was filed on 25.08.2022 is well within the limitation period.
20. The complainant has filed the written submission and the same has been taken on record and perused.

C. Relief sought by the complainant:

21. The complainants have sought following relief(s):
 - i. Direct the respondent to pay interest @ of 18% of delay in offering possession from the date of payment till the date of delivery of possession.
 - ii. Direct the respondent to return Rs. 1,12,593/- amount unreasonably charged by respondent by increasing sale price after execution of buyer's agreement between the complainant and the respondent.
 - iii. Direct the respondent to return Rs. 4,95,000/- for reducing the size of central greens from 8 acres to 1.22 Acres.
 - iv. Direct the respondent to return entire amount paid as GST tax by complainant between 01.07.2017 to 24.07.2019
 - v. Direct the complainant's bank to remove the lien marked over fixed deposit of Rs. 3,63,586/- dated 21.01.2019 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 direct the respondent to assist the process of removing lian from complainant's bank by providing noc for the same .

- vi. Direct the respondent to pay an amount of Rs. 55,000/- to the complainants as cost of the present litigation.
22. On the date of hearing, the authority explained to the respondents/promoters 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

The respondent have contested the complaint on the following grounds:

23. That the complainant is not "allottee" but investor who has purchased the apartment in question as a speculative investment. The complainant had approached the respondent and expressed their interest in booking an apartment in the residential group housing project being developed by the respondent known as "Gurgaon Greens" situated in Sector 102, Village Dhankot, Tehsil & District Gurugram.
24. That the complainant was provisionally allotted apartment no GGN-07-0702, admeasuring 1650 sq ft approx. saleable area, in the said project. The complainant had opted for a instalment/construction linked payment plan. The application form and provisional allotment letter are dated 27.01.2013. The buyer's agreement was executed between the complainant and the respondent on 12.06.2013, willingly and consciously after duly understanding and accepting all the terms and conditions thereof. Although the complainant had agreed and undertaken to make timely payments in accordance with the payment schedule, but the complainant were irregular in payment of instalments. The respondent issued notices and reminders for payment calling upon the complainant to make payment as per the payment plan.

25. That it is pertinent to mention herein that as per the terms and conditions of the buyers agreement, the complainant/allottee were under a contractual obligation to make timely payment of all amounts payable under the buyers agreement. The respondent completed construction of the tower in which the apartment in question is situated and applied for the occupation certificate in respect thereon on 13.04.2018. The occupation certificate was issued by the competent authority on 05.12.2018.
26. That it is pertinent to note that once an application for a grant of occupation certificate is submitted for approval in the office of the concerned statutory authority, the respondent ceases to have any control over the same. Therefore, the time period utilised by the statutory authority to grant occupation certificate to the respondent is necessarily required to be excluded from computation of the time period utilised for implementation and development of the project. Upon receipt of the occupation certificate, the respondent offered possession of the apartment in question to the complainant vide letter dated 11.12.2018. The complainant is called upon to remit balance amount as per the attached statement and also to complete the necessary formalities and documentation so as to enable the respondent to hand over possession of the unit.
27. That the complainant took the handover of their unit on 22.03.2019. Thereafter the conveyance deed bearing Vasika No.9435 dated 28.03.2019 has also been got registered. It is pertinent to note, that the complaint was filed almost 3 years after execution of the conveyance deed. The present complaint has been filed as an afterthought to extract monies from the respondent. Thus the present complaint is time barred and deserves to be dismissed at this very threshold with exemplary



- costs. Therefore, the transaction between the complainant and the respondent has been concluded in March 2019 and the complainant is not left with any claim against the respondent.
28. That at the time of taking possession of the apartment, the complainant has admitted and acknowledged themselves to be fully satisfied with regard to the measurements, location, direction, developments of the unit and also admitted and acknowledged that the complainant do not have any claim of any nature whatsoever against the respondent and that upon acceptance of possession, the liabilities and obligations of the respondent as enumerated in the allotment letter/buyer's agreement, stand fully satisfied. Thus, the complainant is estopped from filing the present complaint.
29. That the occupation certificate was issued by the competent authority on 05.12.2018 and the offer of possession was made 5 days later, i.e., on 11.12.2018. Thus, there is no delay in so far as the respondent is concerned.
30. That in terms of clause 16(d) of the buyer's agreement, no compensation is payable due to delay or non-receipt of the occupation certificate, completion certificate and/or any other permission/sanction from the competent authority. Nevertheless, it is pertinent to mention herein that compensation amounting to Rs. 3,07,171/- was credited to the complainant although in accordance with the buyer's agreement, the complainant, being in default of the buyer's agreement is/was not entitled to any compensation from the respondent. Further an amount of Rs 74,664/- was credited towards anti-pprofitting.
31. The respondent has filed the written submission and the same has taken on record and perused.

32. All other averments made in the complaints were denied in toto.
33. 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 those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

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

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.

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.

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

F. Objections raised by the respondent:-

^h
F.I Wether the complainant can claim delayed possession charges
[^]
after execution of conveyance deed.

34. It has been contended by the respondent that on 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 complainant against the other. Therefore, the complainants are estopped from claiming any interest in the facts and circumstances of the case.
35. 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.

36. 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.
37. The allottees have invested their hard-earned money and there is no doubt that the promoter has been enjoying benefits of and the next step is to get their title perfected by executing a 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 a 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 right 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 title to the flats for which they had paid valuable consideration. In this backdrop, the simple question which we need to address is whether a flat buyer who seeks to espouse 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 which the NCDRC has espoused. We cannot countenance that view.

35. *The flat purchasers invested 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 seeking 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."*
38. 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.
39. 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.



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

40. 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 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 a 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 is of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.
41. 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 maybe prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
42. In CR/NO. 5604/2022 the cause of action arose on 11.12.2018 when the offer of possession was made by the respondent to the complainant. The complainant has filed the present complaint on 25.08.2022 which is 3 years 8 months and 14 days from the date of cause of action. In the present matter 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 23.11.2023 In view of the above, the Authority is of the view that the present complaint has been filed within a reasonable period of time and is not barred by the limitation.

43. In CR/NO. 6123/2022 the cause of action arose on 18.07.2019 when the offer of possession was made by the respondent to the complainant. The complainant has filed the present complaint on 21.09.2022 which is 3 years 2 months and 3 days from the date of cause of action. In the present matter 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 01.07.2024 In view of the above, the Authority is of the view that the present complaint has been filed within a reasonable period of time and is not barred by the limitation.

G. Findings on the relief sought by the complainant

G.I Direct the respondent to pay interest @ of 18% of delay in offering possession from the date of payment till the date of delivery of possession.

44. The complainant intends to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

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."*

45. Clause 14 of the floor buyer's agreement provides the time period of handing over possession and the same is reproduced below:

14 (a) Time of handing over the Possession

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 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.

46. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the unit within a period of 36 months from the date of start of construction. The date of start of construction is 14.06.2013 .Further, it was provided in the buyer's agreement that company shall be entitled to a grace period of five months, for applying and obtaining the completion certificate/ occupation certificate in respect of the unit and/or the project.
47. The Authority put reliance on the judgement of the Hon'ble Appellate Tribunal in appeal no. 433 of 2022 tilted as Emaar MGF Lamd Limited Vs Babia Tiwari and Yogesh Tiwari, wherein it has been held that if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. The relevant para is reproduced below:

As per section 18 of the Act, if the project of the promoter is delayed and if the allottee wishes to withdraw then he has the option to withdraw from the project and seek refund of the amount or if the allottee does not intend to withdraw from the project and wishes to continue with the project, the allottee is to be paid interest by the promoter for each month of the delay. In our opinion if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. So, in view of the above said

circumstances, the appellant-promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the Occupation Certificate.

48. Therefore, in view of the above judgement and considering the provisions of the Act, the authority is of the view that, the promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the occupation certificate. Thus the due date of handing over of possession comes out to be 14.11.2016
49. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the prescribed rate of interest on the amount already paid by him. 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.

50. 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.



51. 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., 16.04.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
52. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:
- "(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.
Explanation. —For the purpose of this clause—
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 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;"*
53. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
54. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the Authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 14 of the agreement, the possession of the subject apartment was to be delivered within 36 months from the date of start of construction. For the reasons quoted above, the due date

of possession is to be calculated from the date of start of construction i.e., 14.06.2013 and the said time period of five months is allowed, therefore due date of possession comes out to be 14.11.2016.

55. The respondent has obtained the occupation certificate on 05.12.2018. 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 allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 12.06.2013 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 12.06.2013 to hand over the possession within the stipulated period.
56. 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 complainant only on 11.12.2018. So, it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 month of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has 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., 14.11.2016

till the date of offer of possession or till the date of handover whichever earlier.

57. 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. from the due date of possession i.e., 14.11.2016 till the date of offer of possession plus two months or till the date of handing over whichever is earlier as per provisions of section 18(1) of the Act read with rule 15 of the Rules.
58. An amount of Rs. 3,07,171/- has been paid by the respondent as delayed compensation to the complainant . The same amount may be adjusted as the same is paid towards delay in handing over of the possession of the unit to the complainant.

G.II Direct the respondent to return Rs. 1,12,593/- amount unreasonably charged by respondent by increasing sale price after execution of buyer's agreement between the complainant and the respondent.

G.III Direct the respondent to return Rs. 4,95,000/- for reducing the size of central greens from 8 acres to 1.22 Acres.

G.IV Direct the respondent to return entire amount paid as GST tax by complainant between 01.07.2017 to 24.07.2019.

G.V Direct the complainant's bank to remove the lien marked over fixed deposit of Rs. 3,63,586/- dated 21.01.2019 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 direct the respondent to assist the process of removing lian from complainant's bank by providing noc for the same .

59. The above mentioned reliefs no. G.II (a), (b), (c) and (d) as sought by the complainant is being taken together as the findings in one relief will



definitely affect the result of the other reliefs and these reliefs are interconnected.

60. It is important to note that the conveyance deed was executed between the parties on 28.03.2019. The conveyance deed is a legal document that transfers the title of property from one party to another, signifying the completion of the property transaction especially regarding payments related to the purchase price, taxes, registration fees, and any other contractual financial commitments outlined in the agreement. However, despite the conclusion of the financial obligations, the statutory rights of the allottee persist if any provided under the relevant Act/Rules framed thereunder. Execution of conveyance deed is a sort of entering into a new agreement which inter alia signifies that both parties are satisfied with the considerations exchanged between them, and also that all other obligations have been duly discharged except the facts recorded in the conveyance deed. The said clause reproduced below as:

That the actual, physical, vacant possession of the said Apartment has been handed over to the Vendee and the Vendee hereby confirms taking over possession of the said Apartment / parking space(s) from the Vendors after satisfying himself / herself that the construction as also the various installations like electrification work, sanitary fittings, water and sewerage connection etc. have been made and provided in accordance with the drawings, designs and specifications as agreed and are in good order and condition and that the Vendee is fully satisfied in this regard and has no complaint or claim in respect of the area of the said Apartment, any item of work, material, quality of work, installation etc., therein.

61. It is pertinent to mention here that complainant took the possession and got the conveyance deed executed, without any demur, protest or

claim. The complainant has neither raised any grievance at the time of taking over the possession or at the time of execution of the conveyance deed, nor reserved any right in the covenants of the conveyance deed, to claim any refund of preferential location charges or any other charges. Also it is a matter of record that no allegation has been levelled by the complainant that conveyance deed has been got executed under coercion or by any unfair means.

62. The Authority is of 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 including right to claim compensation for delayed handing over of possession and compensation under section 14 (3) and 18 of the RERA Act, 2016. In view of the above, the complainant cannot press for any other relief with respect to financial transaction between the parties after execution of conveyance deed except the statutory obligations specifically provided in the Act of 2016

G.VI Direct the respondent to pay an amount of Rs. 55,000/- to the complainants as cost of the present litigation.

63. The complainant is seeking above mentioned 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. 2021-2022(1) RCR (C), 357 held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive



jurisdiction to deal with the complaints in respect of compensation & legal expenses.


G. Directions of the authority

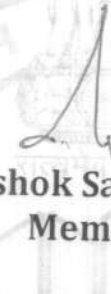
64. Based on above determination of the authority and acceptance of report of the committee, the authority hereby passes this order and issues the following directions under section 37 of the Act in respect all matter dealt jointly to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

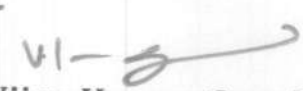
- i. The respondent shall pay interest at the prescribed rate i.e., 10.85 % per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 14.11.2016 till the date of offer of possession plus two months or the date of handing over whichever is earlier as per proviso to section 18(1) of the Act read with rule 15 of the rules. Also an amount which has already been given by the respondent as credit compensation shall be deducted / adjusted towards the delay possession charges to be paid by the respondent.
- ii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85 % by the 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.




- iii. 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 rules.
65. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
66. Complaints stand disposed of.
67. Files be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.04.2024