

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

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| Complaint no. | : | 2817 of 2021 |
| Date of filing complaint: | | 15.07.2021 |
| Date of decision | | 09.04.2024 |

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| Prabodh Praveen Sushma Sharma R/O: 19b/1, Flat No.B1, Angels Apartment, Mehrauli | Complainants |
| Versus | |
| M/S Emaar India Ltd. Regd. Office: Ece House, 28 Kasturba Gandhi Marg, New Delhi 110001 | Respondent |

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| CORAM: | |
| Shri Arun Kumar | Chairman |
| Shri Vijay Kumar Goyal | Member |
| Shri Sanjeev Kumar Arora | Member |
| APPEARANCE: | |
| Sh. Geetansh Nagpal (Advocate) | Complainants |
| Sh. J.K Dang (Advocate) | Respondent |

ORDER

- The present complaint has been filed by the complainant/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the

provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

| Sr. No. | Particulars | Details |
|---------|---|--|
| 1. | Name of the project | Emerald Floors Premier at Emerald Estate, Sector 65, Gurugram, Haryana |
| 2. | Total area of the project | 25.499 acres |
| 3. | Nature of the project | Group housing colony |
| 4. | DTCP license no. | 06 of 2008 dated 17.01.2008 Valid till 16.01.2025 |
| 5. | Registered/not registered | Registered vide no. 104 of 2017 dated 24.08.2018 [For 82768 sq. mtrs.] Valid till 23.08.2022 |
| 6. | Allotment letter issued in favour of the original allottees (Ajay Vij and anr.) | 28.01.2010 [Page 68 of reply] |
| 7. | Unit no. | EFP-26-0102, 1 st floor, tower 26 [page 76 of reply] |
| 8. | Area of the unit (super area) | 1975 sq. ft. [page 76 of reply] |
| 9. | Buyer's agreement executed between the original allottees | 24.04.2010 |

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| | and the respondent on | [page 72 of reply] |
| 10. | Possession clause | <p>11. POSSESSION</p> <p>(a) Time of handing over the Possession</p> <p><i>Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 36 months from the date of execution of buyer's agreement. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of three months, for applying and obtaining the completion certificate/ occupation certificate in respect of the Unit and/or the Project. (emphasis supplied)</i></p> <p>[page 89 of reply]</p> |
| 11. | Due date of possession | <p>24.07.2013</p> <p>(Inadvertently mentioned in the proceeding of the day as 24.04.2013)</p> |
| 12. | Complainants are subsequent allottees | <p>In pursuance of agreement to sell dated 22.07.2018 (page 134 of reply) executed between the complainants and the original allottee, the complainants' name was endorsed on the buyer's agreement. Thereafter, the respondent has issued nomination letter in favour of the complainants on 10.10.2018 (Page 142 of reply).</p> |

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| 13. | Total consideration as per the statement of account dated 16.08.2021 at page 155 of reply | Rs.1,02,26,480/- |
| 14. | Total amount paid by the complainant as per statement of account dated 16.08.2021 at page 156 of reply | Rs.1,02,96,359/- |
| 15. | Occupation certificate on | 05.03.2019 [page 159 of reply] |
| 16. | Offer of possession | 05.11.2019 [Page 161 of reply] |
| 17. | Unit handover letter dated | 29.01.2020 [page 173 of reply] |
| 18. | Conveyance deed executed on | 14.05.2020 [Page 174 of reply] |

B. Facts of the complaint

The complainants have submitted as under:

3. That in the year 2009, the respondent company issued an advertisement announcing a group housing colony project called 'emerald premier floors' situated at Sector 65, Gurugram, Haryana and thereby invited applications from prospective buyers. The initial allottees Mr. Ajay Vij and Mrs. Anjali Vij paid an initial amount of Rs. 5,00,000/- vide rtgs transfer no: 16ri11110002 dated 21.01.2010 and was acknowledged by the respondent vide statement of account dated 07.03.2020 and accordingly filled the application form for one unit and opted for construction linked payment plan. The initial allottees were allotted one unit being EFP-26-0102 in the above said project.

4. That the initial allottees made a payment of Rs. 7,93,753 and Rs. 10,87,505 dated 06.04.2010 and 22.04.2010. The payment was acknowledged by the respondent vide statement of account dated 07.03.2020. The initial allottees were made to sign the dotted line of a one sided builder buyer agreement duly executed on the 24.04.2010
5. That the initial allottees made various payments as per the acknowledgement in statement of account attached.
6. That the initial allottees Mr. Ajay Vij and Mrs. Anjali Vij executed a special power of attorney dated 18.06.2018 stated their intention to sell the unit EFP-26-0102 at Emerald Floors Premier and appointed Mr. Subhash Chander Dua to act on their behalf regarding the above said property. The initial allottees executed an agreement to sell dated 22.07.2018 selling the said unit to the present complainants i.e., Mr. Prabodh Praveen and Mrs. Sushma Sharma. The complainants made a payment of Rs. 68,207 vide Cheque No: 817413 dated 10.08.2018 on account delay payment charges and the same was acknowledged by the respondent vide statement of account dated 07.03.2020
7. That the respondent issued a nomination letter dated 10.10.2018 to the complainants confirming the transfer of title of property in the name of complainants also stating the total sum received so far of Rs. 88,84,028/-. The respondent credited an amount of Rs. 13,013 vide Voucher No: 811271 dated 18.12.2018 for a compensation on account of Anti-Profiting, Rs. 6,716 vide Voucher No: 819628 dated 12.04.2019 for a compensation on account of Anti-Profiting. The payment was acknowledged by the Statement of Account dated 07.03.2020, Rs. 39,601 vide Voucher No: 845427 dated 19.08.2019 for a compensation on account of Anti-Profiting. The payment was acknowledged by the Statement of Account dated 07.03.2020, Rs. 10,912 vide Voucher No:

868448 dated 05.11.2019 for compensation on account of EPR which was acknowledged by the statement of account dated 07.03.2020.

8. That the respondent issued the letter of offer of possession dated 05.11.2019 wherein a list of additional payments to be made before taking delivery of the unit was annexed. The complainants made a payment of Rs. 5,07,758/- vide Demand Draft No: 906706 dated 07.01.2020 and also made a payment of Rs. 6,48,123 vide Cheque No. 000065 dated 09.01.2020. The payments have been acknowledged by the statement of account dated 07.03.2020.
9. That offering possession by the respondent on payment of charges which the flat buyer is not contractually bound to pay, cannot be considered to be a valid offer of possession. HVAT was never, as per the Act, payable by the complainants and hence the offer of possession is not a valid offer of possession. The respondent is insisting Advance monthly maintenance charges for a period of 12 months which is illegal and therefore for this reason as well the letter of offer of possession is an invalid offer. The respondent asking for interest free maintenance security as the maintenance security is also illegal and amounts to unjust enrichment depriving the complainants of a huge loss of interest on a sum of Rs. 98,750.00 which can only be demanded within 45 days from issuing a valid offer of possession and since for the above stated reasons the offer of possession isn't valid the respondent is guilty of unjust enrichment.
10. That the complainants contacted the respondent on several occasions and were regularly in touch with the respondent individually as well as through its association called emerald estate apartments owners welfare association well, office bearers of which, were chasing the respondent for construction on very regular basis. After losing all hope from the respondent company and having shattered and scattered dreams of owning a flat and also losing

considerable amount of money (as per the buyer's agreement dated 24.04.2010), the complainants received the letter of possession after a delay of more than 6 years dated 05.11.2019, and till now the area looks far from complete and habitable.

11. That the respondent issued the unit handover letter to the complainants dated 29.01.2020 stating that the respondent have received the occupation certificate for the unit no: EFP-26-0102. It is pertinent to note that herein that As per clause 11 (a) of the buyer's agreements, which was signed on 24th april, 2010, details of which are attached, the possession of the said unit was supposed to be delivered within 36 months from the execution of buyers agreement i.e., 24.04.2013 plus a grace period of three months i.e. by the 24.07.2013. It would be appreciated that the offer of possession of the flat has been made after a delay of more than six years.
12. That deposit of hvat of Rs. 79,877.00 (before the execution of conveyance deed) as per letter of offer of possession letter which is illegal and unjustified. Offering of possession, by the respondent, on payment of charges which the flat buyer is not contractually bound to pay, cannot be considered to be a valid offer of possession. Hvat was never, as per the act, payable by the allottee and hence the offer of possession is not a valid offer of possession. It is therefore requested/prayed that the respondent/company may kindly withdraw this demand of rs. 79,877.00 towards hvat from their offer of possession.
13. That the respondent has collected GST/Service Tax of Rs. 65,996.00. The GST Act came into force in the year 2017 and therefore, it is a fresh tax. The possession of the Unit was supposed to be delivered by 24.07.2013, therefore, the tax which has come into existence after the deemed date of delivery should not be levied as it is unjustified. As per the buyer's agreement, the ifms was payable on the offer of possession. No offer of possession has been made

in the letter dated 05.11.2019 which is the nature of a notice/final demand letter informing the allottees. Since the offer of possession is not valid, hence the demand of IFMS contained in the so-called offer of possession letter would also be illegal and unjustified. The respondent has stated at Annexure 1 of offer of possession that, 12 months of advance maintenance charges @ Rs. 3.5 per Sq. Ft Plus GST @ 18% for 12 months amounting to Rs. 82,950.00 has to be paid by the complainants. The respondent asking for Annual maintenance charges from the complainants is also illegal.

14. That as per Clause 1.3 of the builder buyers agreement duly executed by the respondent on 24.04.2010 the builder was to provide for one covered parking free of cost to the complainants. It apposite to mention that the respondent issued the complainants a car parking bearing number b-175 duly reordered in the conveyance deed executed on 14.05.2020. After the registry the complainants visited the allotted car parking only to see that the respondent had illegally built an electrical panel in the solely allotted car parking. That upon further discussions with the agents of respondent the complainants were made to pay an additional amount of rs. 1,18,000.00 including GST against the issuance of a tandem car parking. That the respondent is guilty of unjust enrichment and unfair trade practices for not issuing a reserved car parking as per clause 1.3 of the builder buyer's agreement and is liable to compensate the complainants for the unnecessary expense incurred. It is pertinent to mention that the complainants were made to file for several rectification deeds to rectify the errors made by the respondent in the conveyance deed.

C. Relief sought by the complainants:

15. The complainants have sought following relief(s):

- i. Direct the respondent to pay the balance amount due to the complainants from the respondent on account of interest.
 - ii. Direct the respondent to remit back the amount charges on account of Fixed Deposit of Hvat , advance monthly maintenance security , interest free maintenance security .
 - iii. Direct the respondent to compensate the complainants for not providing an allotted car parking as mentioned under clause 1.3 of the byer agreement.
 - iv. Direct the respondent not to ask for any charges which is not as per the buyer agreement.
16. 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 has contested the complaint on the following grounds:

17. 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. The original allottees, Ajay Vij and Anjali Vij, had approached the respondent and expressed an interest in booking an apartment in the residential group housing colony developed by the respondent known as "Emerald Floors Premier" at Emerald Estate, situated in Sector 65, Gurugram. An apartment bearing number EFP-26-0102 was provisionally allotted to the original allottees on 28.01.2010. Application form submitted by the original allottees. Provisional allotment letter dated 28.01.2010 in favour of the original allottees. The buyer's agreement was executed between the original allottees and the respondent dated 24.04.2010.
18. That the original allottees entered into an agreement to sell the apartment in question in favour of the complainants on 22.07.2018. So as to obviate all

further controversy on the subject, the Complainants also executed an Affidavit and Indemnity cum Undertaking affirming and acknowledging that the complainants shall not be entitled to any compensation for delay in handing over possession. Based on the transfer documents executed by the parties and undertaking given by the complainants, the allotment was transferred in the name of the complainants and the nomination letter dated 10.10.2018 confirming transfer of allotment in favour of the complainants.

19. That the original allottees had opted for a construction linked payment plan and had agreed and undertaken to make payment in accordance therewith. However, the original allottees defaulted in timely payment of sale consideration on numerous occasions. Even otherwise, in so far as payment of compensation/interest to the Complainants is concerned, it is submitted that the Complainant, having specifically acknowledged and admitted that the Complainants were/are not entitled to any compensation for delay in possession, in terms of the Affidavit and Indemnity cum Undertaking, are estopped from alleging delay and claiming any compensation from the respondent for alleged delay. Furthermore, in terms of Clause 13(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.
20. That the respondent completed construction of the tower/apartment allotted to the complainants and applied for the occupation certificate on 29.06.2017 and occupation certificate was thereafter issued in favour of the respondent vide memo bearing no. ZP-441/SD(DK)/2019/5982 dated 05.03. Possession of the unit was offered vide offer of possession dated 05.11.2019. The complainants took possession of the unit on 29.01.2020, vide the unit handover letter after certifying that the complainants were fully

satisfied with the unit in all respects and did not have any claim of any nature whatsoever against the respondent and that the obligations of the respondent stood fully discharged upon delivery of possession. Thereafter the conveyance deed was registered in favour of the complainants on 14.05.2020. Thus, the Respondent has duly fulfilled its obligations under the Buyer's Agreement, as amended by the transfer documents executed by the Complainants, as well as under the Act by offering possession within the validity of the registration under the Act. Thus, there is no default or lapse in so far as the respondent is concerned.

21. That the respondent has also credited a sum of Rs. 59,330 /- as benefit on account of Anti-Profiting and Rs. 10,912 /- towards early payment rebate EPR. Without admitting or acknowledging in any manner the truth or legality of the allegations levelled by the complainants and without prejudice to the contentions of the respondent, it is submitted that the project has got delayed on account of the following reasons which were/are beyond the power and control of the respondent and hence the respondent cannot be held responsible for the same

I. Second staircase issue:

22. The building plans for the apartment/tower in question was approved by the competent authority under the then applicable National Building Code in terms of which buildings having height of 15mtrs or above but having area of less than 500 sq mtrs on each floor, were being approved by the competent authorities with a single staircase and construction was carried out accordingly.
23. Subsequently, the National Building Code (NBC) was revised in the year 2016 and in terms of the same, all high rise buildings (i.e buildings having

height of 15 mtrs and above), irrespective of the area of each floor, are now required to have two stair cases. Furthermore, it was notified vide Gazette published on 15.03.2017 that the provisions of NBC 2016 supersede those of NBC 2005.

24. The Fire Department is seeking to retrospectively apply the said provision and while processing the Fire NOC application has been insisting on two stair cases in all high rise buildings even in cases where the building plans stood approved with a provision for a single staircase and which have been constructed accordingly. The Fire Department has issued a provisional Fire NOC with the requirement that the second staircase would be constructed by the Developer within one year from the date of issuance of the provisional Fire NOC.

25. In view of the practical difficulties in constructing a second staircase in a building that already stands constructed according to duly approved plans, the respondent made several representations to various Government Authorities requesting that the requirement of a second staircase in such cases be dispensed with. It was pointed out by the respondent that construction of a second staircase would not be possible for several technical reasons such as obstruction of Fire tender path, violation of the setback norms, violation of fire safety norms in as much as the second staircase would not be connected to the common lobby area and that construction of second staircase by connecting balconies of the dwelling units would pose a security and privacy concern.

26. The Fire Department inspected the site of the project and sought alternate proposals from the respondent to meet the requirement of second staircase in the buildings in question. Eventually, the Respondent went ahead and constructed the second staircase. The construction of the second stair case

has been completed and the Respondent is in receipt of the occupation certificate dated 05.03.2019. However, on account of the construction of the second staircase issue, keeping in mind the safety of the allottees and their families, the offer of possession was held in abeyance until completion of construction of the second staircase and issuance of the Fire NOC and thereafter possession has been offered to the complainants. Possession of the apartment was offered to the complainants vide offer of possession dated 05.11.2019. The complainants were called upon to complete certain formalities/documentation so as to enable the Respondent to hand over possession and also to make payment of outstanding dues as per the statement annexed along with the offer of possession. Possession of the unit was handed over on 29.01.2020.

II. Defaults of Contractor:

27. That a contract dated 1 November 2010 was executed between the Respondent and M/s B L Kashyap and Sons (BLK/Contractor) in terms of which the Contractor was to construct residential projects being developed by the Respondent in the name and style of "Emerald Estate" and "Emerald Floors Premier", including civil, structure, finishing, MEP, external development, infrastructure, horticulture, EWS, clubhouses, swimming pools, convenience shopping etc. The start date of the project as determined by the parties was 26 July 2010 and the scheduled date of completion of the project was 25 July 2013.
28. That the Contractor was not able to meet the agreed timelines for construction of the project. The progress of work at the project site was extremely slow on account of various defaults on the part of the Contractor, such as failure to deploy adequate manpower, shortage of materials etc. in

- this regard, the Respondent made several requests to the Contractor to expedite progress of the work at the project site. However, the Contractor did not adhere to the said requests and the work at the site came to a standstill. Letters sent by the Respondent to the Contractor, BLK .
29. That in the aforesaid circumstances, the Respondent was constrained to issue Notice of Termination dated 16.01.2015, terminating the Contract and calling upon the contractor to remove itself from the Project site without removal/ damage to the materials, equipments, tools, plant & machinery, and to hand over the Contract documents.
30. The respondent filed a petition bearing no. O.M.P. No. 100 of 2015 under Section 9 of the Arbitration and Conciliation Act, 1996 before this Hon'ble High Court seeking urgent reliefs in the nature of restraining the Contractor from interfering with the business activities of the Petitioner at the Project site, removing any material, equipment, tools, plant & machinery from the Project site and appointing a local commissioner to inspect the Project site and prepare an inventory of material, equipment, tools, plant & machinery.
31. However, the parties settled the disputes during the pendency of the aforesaid proceedings and the contractor assured the respondent that the project shall be completed within the decided timeline.
32. That in spite of the aforementioned settlement between the respondent and the contractor, and with the contractor's assurances that the project will be finished within the agreed timeline, the contractor did not amend its ways, and persistently defaulted in meeting the agreed timelines for completion of the project.
33. That in the meanwhile, the National Building Code (NBC) was revised in the year 2016 and in terms of the same, all high rise buildings (i.e buildings having height of 15 mtrs and above), irrespective of the area of each floor, are now

required to have two stair cases. Furthermore, it was notified vide Gazette published on 15.03.2017 that the provisions of NBC 2016 supersedes those of NBC 2005. The respondent had accordingly sent representations to various authorities identifying the problems in constructing a second staircase. Eventually, so as to not cause any further delay in the project and so as to avoid jeopardising the safety of the occupants of the buildings in question, the Respondent had taken a decision to go ahead and construct the second staircase. However, due to the impending BL Kashyap (contractor) issue of non-performance, the construction of the second staircase could not be started as well.

34. That in view of the above, the respondent was constrained to terminate the contract with the contractor vide termination notice dated 30.08.2018.
35. That the aforesaid two petitions, along with two other petitions pertaining to a different contract came up for hearing on 6th of September 2018. The Honorable High Court by order dated 6th of September 2018 disposed of the said cases and issued several directions. The Honorable High Court appointed Justice A P Shah (Retd) as the Sole Arbitrator for adjudication of disputes between the respondent and the contractor.
36. That the arbitration proceedings titled as B L Kashyap and Sons Vs Emaar MGF Land Ltd (arbitration case number 1 of 2018) before Justice A P Shah (Retd), Sole Arbitrator have been initiated.
37. The Hon'ble Arbitrator vide order dated 27.04.2019 gave liberty to the respondent to appoint another contractor w.e.f. 15.05.2019.
38. That the complainants cannot claim any relief which was not available to the original allottees or contemplated under the provisions of the buyer's agreement. The complainants have availed a loan for purchasing the unit in question from the HDFC bank. The tripartite agreement executed between the

complainants, respondent and HDFC. It is respectfully submitted that HDFC holds a lien over the unit in question and as such ought to have been impleaded as a party to the present complaint. The present complainant is thus bad for misjoinder of HDFC as a necessary and proper party and liable to be dismissed on this ground as well.

39. All other averments made in the complaints were denied in toto.

40. 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.

41. 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. Objection regarding maintainability of complaint on account of complainant being investor.

42. The respondent took a stand that the complainant is investor and not consumers and therefore, he is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he 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 allotment letter, it is revealed that the complainant is buyer's, and he has paid a total price of Rs.1,02,96,359/- to the promoter towards purchase of a unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

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

acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

43. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred to 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". Thus, the contention of the promoter that the allottee being investor are not entitled to protection of this Act also stands rejected.

G. Objections raised by the respondent:-

G.I Whether the complainant is entitled for delayed possession charges after the execution of conveyance deed.

44. 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.

45. 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). 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 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.

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

49. 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.

50. 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.
51. The cause of action arose on 05.11.2019 when the offer of possession was made by the respondent to the complainant. The complainant has filed the present complaint on 15.07.2021 which is 1 year 8 months and 10 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 18.10.2024 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.III Where the subsequent allottee has stepped into the shoes of the original allottee after coming into force of the Act and after the registration of the project in question:

52. There may be a situation where an allottee transferred his unit in favour of a subsequent allottee after the Act came into force and where the project has been registered under the Act by the respondent.
53. The authority is of the view that the time period for handing over the possession is committed by the builder as per the relevant clause of builder buyer's agreement and the commitment of the promoter regarding handing over of possession of the unit is taken accordingly. The new timeline indicated

in respect of ongoing project by the promoter while making an application for registration of the project does not change the commitment of the promoter to hand over the possession by the due date as per the builder buyer's agreement. The new timeline as indicated by the promoter in the declaration under section 4(2)(I)(C) is now the new timeline as indicated by him for the completion of the project. The due date for possession as per the agreement remains unchanged and the promoter is liable for the consequences and obligations arising out of failure in handing over possession by the due date as committed by him in the builder buyer's agreement and is liable for the delayed possession charges as provided in proviso to section 18(1) of the Act.

54. Moreover, as delineated hereinabove, the Act does not distinguish between the original allottee and the subsequent allottee. The Act, by virtue of section 18, has created statutory right of delay possession charges in favour of the allottees. No doubt, the subsequent allottee knew the new date of completion as declared by the promoter but that does not abrogate the statutory rights of the subsequent allottee. Therefore, the authority is of the view that in cases where the subsequent allottee had stepped into the shoes of original allottee after coming into force of the Act and after the registration of the project in question, the delayed possession charges shall be granted w.e.f. due date of handing over possession as per the builder buyer's agreement.

H. Findings on the relief sought by the complainants

H.I Direct the respondent to pay the balance amount due to the complainants from the respondent on account of interest

55. The present complainant is a 1st subsequent allottee who has purchased the subject unit from the original allottee on 22.07.2018 i.e., at such a time after the due date of possession and has stepped into the shoes of an original allottee on this date.

56. 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."

57. Clause 11 of the floor buyer's agreement provides the time period of handing over possession and the same is reproduced below:

11. POSSESSION

(a) Time of handing over the Possession

Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 36 months from the date of execution of buyer's agreement. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of three months, for applying and obtaining the completion certificate/ occupation certificate in respect of the Unit and/or the Project.

58. **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 execution of the buyer's agreement. Further, it was provided in the buyer's agreement that company shall be entitled to a grace period of three months, for applying and obtaining the completion certificate/ occupation certificate in respect of the unit and/or the project.

59. 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.

60. 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 24.07.2013.

61. 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.

62. 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.

63. 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., 09.04.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

64. 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.

65. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the Authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 11 of the agreement, the possession of the subject apartment was to be delivered within 36 months from the date of execution of the buyer's agreement. For the reasons quoted above, the due date of possession is to be calculated from the date of execution of the buyer's agreement i.e.,

24.04.2010 and the said grace period of three months is allowed, therefore due date of possession comes out to be 24.07.2013.

66. The respondent has obtained the occupation certificate on 05.03.2019. 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 24.04.2010 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 24.04.2010 to hand over the possession within the stipulated period.

67. 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 05.03.2019. The respondent offered the possession of the unit in question to the complainant only on 05.11.2019. 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., 24.07.2013 till the date of offer of possession plus two months or till the date of actual taking over of possession whichever earlier.

68. 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., 24.07.2013 till the date of offer of possession plus two months or till the date of actual taking over of possession whichever earlier per provisions of section 18(1) of the Act read with rule 15 of the Rules.

H.II Direct the respondent to remit back the amount charges on account of Fixed Deposit of Hvat , advance monthly maintenance security , interest free maintenance security .

69. It is important to note that the conveyance deed was executed between the parties on 14.05.2020. 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.

70. It is pertinent to mention here that complainant took the possession and got the conveyance deed executed, without any demur, protest or claim. The complainants have 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 complainants that conveyance deed has been got executed under coercion or by any unfair means.

71. 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.

H.III Direct the respondent to compensate the complainants for not providing an allotted car parking as mentioned under clause 1.3 of the byer agreement.

72. 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.

H.IV Direct the respondent not to ask for any charges which is not as per the buyer agreement.

73. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.

I. Directions of the authority

74. 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):

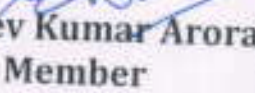
- i. The respondent shall pay interest at the prescribed rate i.e., 10.85 % per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 24.07.2013 till the date of offer of possession i.e 05.11.2019 plus two months or till the date of actual taking over of possession whichever earlier as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- 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 within 90 days from the date of this order as per rule 16(2) of the rules.

75. Complaints stand disposed of.

76. Files be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

HARERA
GURUGRAM
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.04.2024