

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

Complaint no. :	6085 of 2022
Date of filing complaint:	07.09.2022
Date of decision:	16.04.2024

Smt. Sumika Gupta Sh. Mukund Garg Smt. Shikha Sharma Smt. Meenu Mathur R/O: Flat no. 0402, Tower 4, Palm Gardens, Sector 83, Gurugram Haryana - 122004	Complainants
Versus	
Emaar India Limited Office: 306-308, 3 rd floor, Square One, C-2, District Centre, Saket, New Delhi-110017	Respondent

CORAM:	
Shri Arun Kumar	Chairman
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Jagdeep kumar (Advocate)	Complainants
Sh. J.K Dang (Advocate)	Respondent

ORDER

1. 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 allottees as per the agreement for sale executed inter se.

A. Unit and project related details

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

S.no.	Heads	Information
1.	Name of the project	"Palm Gardens", Sector-83, District-Gurugram, Haryana
2.	Nature of the project	Residential group housing colony
3.	DTCP license no. and validity status	108 of 2010 dated 18.12.2010 for 21.9 acres Valid/renewed up to 17.12.2023
4.	Name of licensee	Registered vide no. 330 of 2017 dated 24.10.2017
5.	HRERA registered/ not registered	Registered vide no. 330 of 2017 dated 24.10.2017
6.	HRERA registration valid up to	31.12.2018
7.	Unit no.	PGN-04-0402 (Page no. 33 of complaint)
8.	Unit admeasuring	1900 sq. ft. (Page no. 33 of complaint)
9.	Provisional allotment letter to the original allottee i.e to Rajkishore Kumar	09.06.2011 [page 26 of reply]
10.	Endorsement by the Original Allottee i.e Rajkishore Kumar	Allotment of the unit no. PGN-04-0402 transferred by the original allottee in the name of present complainants through endorsement dated 07.08.2012
11.	Date of execution of buyer's agreement	October 2011 [page 33 of reply]



12.	Possession clause	<p>10. POSSESSION</p> <p>(a) Time of handing over the Possession</p> <p>Subject to terms of this clause and barring force majeure conditions, subject to the Allottee having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Unit within <u>36 (Thirty Six) months from the date of start of construction</u>, subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the Company shall be entitled to a <u>grace period of 3 (three) months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project.</u></p> <p>(Emphasis supplied) [page 40 of complaint]</p>
13.	Date of start of construction	09.08.2012 (As per statement of account dated 16.09.2022 at page 69 of reply)
14.	Due Date of possession	09.11.2015 (Inadvertently mentioned in the proceeding of the day as 09.08.2015 where grace period was not included)
15.	Total consideration	₹ 98,63,561/- (As per statement of account dated 16.09.2022 at page 69 of reply)
16.	Amount paid by the complainant	₹ 98,85,329/-



		(As per statement of account dated 16.09.2022 at page 71 of reply)
17.	Occupation certificate	10.01.2018 [page 24 of reply]
18.	Offer of possession	19.03.2018 [page 105 of reply]
19.	Unit handover letter	27.08.2018 [page 113 of reply]
20.	Conveyance deed	27.09.2018 [page 114 of reply]

B. Facts of the complaints:

3. That the respondent issued an advertisement announcing a group housing colony known as 'Palm Gardens' situated at Sector 83, Gurugram Haryana-122004. That the original allottees i.e. Mr. Rajkishore Kumar & Mrs Saumya Raj were caught in the web of false promises of the agent of the respondent company, and paid an initial amount of Rs 7,50,000/- through cheque no. 525431 dated 18.04.2011. They were allotted the unit bearing no. PGN-04-0402 having super built up area admeasuring 1900 Sq. ft. in the above said project.
4. That the original allottee and the respondent entered into a builder buyer agreement on 01.10.2011 and the complainants purchased the said unit in the project from original allottees and subsequently the original allottee transfer the said flat in the Name of Mrs. Sumika Gupta , Mr. Mukund Garg, Mrs. Shikha Sharma & Mrs. Meenu Mathur and "Buyer's Agreement" was endorsed in favor of them on 07.08.2012. The respondent confirmed nomination of the Mrs. Sumika Gupta , Mr. Mukund Garg, Mrs. Shikha Sharma

& Mrs. Meenu Mathur for the said unit through nomination letter dated 29.08.2012.

5. That the unit was offered to the original allottee for a total sale consideration of Rs. 94,71,501/- (Which includes the charges towards the Basic Price- Rs. 80,99,700/-, exclusive/dedicated covered car parking Rs 3,00,000, edc & idc Rs 7,36,801/-, club membership Rs 50000, ifms Rs 95000, and plc for corner Rs. 1,90,000/-) hereinafter referred to as "Sale Consideration".
6. That on 29.08.2012 the respondent issued a nomination letter in which respondent confirms that the nomination formalities having completed and accordingly now the captioned property stands in the name of complainants and respondent also confirm having received a total sum of Rs 32,94,263/- which is in line with agreement between complainants and Mr. Rajkishore Kumar & Mrs Saumya Raj W/o Mr. Rajkishore Kumar. The respondent handover payment receipts and "buyer's agreement" along with "nomination letter" to complainants. The complainants found buyer's agreement consisting very stringent and biased contractual terms which are illegal, arbitrary, unilateral and discriminatory in nature, because every clause of agreement is drafting in a one-sided way and a single breach of unilateral terms of provisional allotment letter by complainants, will cost him forfeiting of 15% of total consideration value of unit. When the complainants opposed the unfair trade practices of respondent 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. The complainants opposed these illegal, arbitrary, unilateral and discriminatory terms of buyer's agreement but as there is no other option left with complainants because if complainants stop



the further payment of installments then in that case respondent forfeit 15% of total consideration value from the total amount paid by complainants.

7. That after the endorsement was made on the buyers agreement in favour of the complainants, the complainants with bona-fide intentions continued to make payments on the basis of the demand raised by the respondent. During the period starting from 07.08 2012, the date of endorsement on the buyer's agreement, the respondent raised demands of payments vide various demand letter which were positively and duly paid by complainants. A total of more than Rs. 98,85,327/- was paid. Thus, showing complete sincerity and interest in project and the said unit.
8. That as per Annexure-III (Schedule of Payments) of buyer's agreement the total sale consideration exclusive of st and gst taxes is Rs. 94,71,501/- (Which includes the charges towards the Basic Price- Rs. 80,99,700/-, exclusive/dedicated covered car parking Rs 3,00,000/-, edc & idc Rs 7,36,801/-, club membership Rs 50,000/-, ifms Rs 95,000/- and plc for corner Rs 1,90,000/-). But later at the time of possession respondent add Rs 1,16,904/- in sale consideration in the name of electricity connection charges and add Rs. 14,160/- in the name of administrative charges without any reason for the same and that way respondent increased the sale consideration by Rs. 1,17,045/- (Rs 1,16,904/- + Rs 14,160/-) without any reason which is a illegal , arbitrary unilateral and unfair trade practice. The complainants opposed the increase in sales consideration at time of possession but respondent did not pay any attention to complainants.
9. That as per the Clause - 10(a) of the said flat buyer's agreement dated 01.10.2011, the respondent had agreed and promise to complete the construction of the said flat and deliver its possession within a period of 36 (Thirty Six) months with a 3 (Three) months grace period thereon from the date of start of construction (date of start of construction is 09-Aug-2012).

10. That the respondent has breached the terms of said flat buyer agreement and failed to fulfill its obligations and has not delivered possession of said flat within the agreed time frame of the builder buyer agreement. The proposed possession date as per buyer's agreement was due on 09.08.2015.
11. That the complainants has paid the entire sale consideration along with applicable taxes to the respondent for the said flat. Although the respondent charges Rs. 1,17,045/- extra on sales price without stating any reason for the same.
12. That the offer of possession offered by respondent through "intimation of possession" was not a valid offer of possession because respondent was offered the possession on dated 19.03.2018 with stringent condition to pay certain amounts which are never be a part of agreement and respondent did not received the completion certificate of various other towers of the project and as on 19.03.2018 project was delayed approx four years. At the time of offer of possession builder did not adjusted the penalty for delay possession. In case of delay payment, builder charged the penalty @24% per annum and in delay in possession give the Rs. 7.5/- sq. ft. Only, this is illegal , arbitrary, unilateral and discriminatory and above all respondent did not even adjust a single penny on account of delay in possession even after a delay of 2 years and 6 months. The respondent did not even allow complainants to visit the property at "Palm Gardens" before clearing the final demand raised by respondent along with the Offer of possession. The respondent demanded one year advance maintenance charges from complainants which was never agreed under the buyer's agreement and respondent also demanded a lean marked FD of Rs. 1,30,563/- in pretext of future liability against hvat which are also a unfair trade practice. The complainant informed the respondent about his unfair trade practice about delay possession penalty and also enquires the construction status of rest of project through telephonically but

respondent does not want answer any enquiry before getting complete payment against his final demand. The respondent left no other option to complainants, but to pay the payment of one year maintenance charges and fixed deposit of Rs. 1,30,563/- with a lien marked in favour of Emaar MGF Land Limited, e-stamp duty towards above said unit no. 0402, Tower 04, Palm Gardens in addition to final demand raised by respondent along with the offer of possession. The respondent give physical handover of aforesaid property only after receiving all payments on 11.06 2018 from the complainants.

13. The complainant informed the respondent through telephonically on dated 27.08.2018 that respondent is creating anomaly by not compensating the complainant for delay possession charges at the rate of interest specified in RERA Act 2016. The complainants makes it clear through his phone call that, if the respondent will not compensate the complainant at the same rate of interest then complainants will approach the appropriate Forum to get redressal. The complainants also wrote several emails to respondent to pay delay possession charges as per RERA Act 2016, but respondent never pay any heed to it. Now whenever complainant enquire about the delay possession charges, respondent making excuse of getting approval from directors, but till date the respondent did not credited the delay possession interest.
14. The respondent did not provide the final measurement of above said unit No. 0402, Tower NO. 04, "Palm Gardens". The respondent charge all idc, edc and plc and maintenance as per area of unit as 1900 sq. ft. but there is no architect confirmation provided by respondent about the final unit area which the respondent will going to handover to complainants.
15. That the respondent has acted in a very deficient, unfair, wrongful, fraudulent manner by not delivering the said flat situated at the project "Palm Gardens"

Sector-83, Gurugram within the timelines agreed in the flat buyer's agreement and otherwise.

16. That the cause of action accrued in favour of the complainants and against the respondent initially on 07.08.2012 when the said flat was booked by original allottee and it further arose when respondent failed /neglected to deliver the said flat on proposed delivery date. The cause of action is continuing and is still subsisting on day-to-day basis.

17. Written submissions have been filed by the complainants and the same has been taken on record and perused.

C. Relief sought by the complainants:

18. The complainants have sought the following relief(s):

- i. Direct the respondent to pay delayed possession charges on the amount paid by the complainant from the date of payment till the date of possession.
- ii. Direct the respondent to refund Rs. 1,17,045/- amount unreasonably charged in the name of "Other Charges" (which includes Rs 1,16,904/- for electricity connection charges and Rs. 14,160/- in the name of administrative charges) after execution of buyer's agreement between the respondent and complainants.
- iii. Direct the respondent to return entire amount paid as GST Tax by complainant between 01.07.2017 to 12.04.2018.
- iv. Direct the complainant's bank to remove the lien marked over Fixed Deposit of Rs 1,30,563/- 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 respondent to assist the process of removing lien from complainant's bank by providing NOC for the same.

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

D. Reply by respondent:

The respondent by way of written reply made following submissions

19. That the application for issuance of occupation certificate in respect of the apartment in question was made on in June, 2017, i.e. before the notification of the Haryana Real Estate Regulation and Development Rules 2017. The occupation certificate has been thereafter issued on 10.01.2018. Thus, the part of the project in which the unit in question is situated (Palm Gardens, Sector 83, Gurgaon) is not an 'Ongoing Project' under Rule 2(1) (o) of the Rules. .
20. That the instant complaint is barred by limitation. The complainants have alleged that the respondent was obligated to offer possession of the unit in question by August, 2015 and by way of the instant complaint have sought interest for indemnifying them for the alleged delay in delivery of the unit in question. It is submitted that cause of action, if any, for seeking interest accrued in favour of the complainants in 2015 and consequently the instant complaint is barred by limitation.
21. That the original allottees i.e. Mr. Rajkishore Kumar and Ms. Saumya Raj had approached the respondent and expressed an interest in booking an unit in the said project. Prior to making the booking, the original allottees conducted extensive and independent enquiries with regard to the project and it was only after the original allottees were fully satisfied about all aspects of the project, that the original allottees took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question.

22. That thereafter the original allottees vide application form applied to the respondent for provisional allotment of a unit in the project. The original allottees, in pursuance of the aforesaid application form, were allotted an independent unit bearing no PGN-04-0402, located on the Fourth Floor, in the project vide provisional allotment letter dated 09.06.2011. The original allottees consciously and willfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that they shall remit every installment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the original allottees and proceeded to allot the unit in question in their favor.
23. That a buyer's agreement dated 24.10.2011 was executed between the original allottees and the respondent. It is reiterated that the original allottees, at the time of seeking allotment of the unit in question, represented and assured the respondent that they would abide by all the terms and conditions of the buyer's agreement. The respondent had no reason to suspect the bona-fide of the original allottees and proceeded to provisionally allot the unit in question in their favour. However, the original allottees defaulted in timely remittance of installments on time.
24. That clause 12 of the buyer's agreement further provides that compensation for any delay in delivery of possession shall only be given to such Allottees who are not in default of their obligations envisaged under the agreement and who have not defaulted in payment of instalments as per the payment plan incorporated in the agreement. In case of delay caused due to non-receipt of occupation certificate, completion certificate or any other permission/sanction from the competent authorities, no compensation or any other compensation shall be payable to the allottees. The original allottees, having defaulted in payment of instalments, were thus not entitled

to any compensation or any amount towards interest under the buyer's agreement. The complainants have always been conscious and aware of this fact and have preferred the instant complaint in order to obtain wrongful gain and to cause wrongful loss to the respondent.

25. That thereafter the complainants approached the original allottees for purchasing their rights and title in the unit in question. The original allottees acceded to the request of the complainants and agreed to transfer and convey their rights, entitlement and title in the unit in question to the complainants. The transfer documents executed by the complainants in this regard are put on record. It is submitted that the complainants having been substituted in the place of the original allottees in respect of the provisional allotment of the unit in question, are not entitled to any compensation for delay, if any, in delivery of possession of the unit in question or any rebate under a scheme or otherwise or any other discount, by whatever name called, from the respondent.
26. That the complainants have executed an indemnity cum undertaking dated 05.04.2018 whereby the complainants have admitted their obligation to discharge their ~~liab~~ liability thereunder. The complainants have preferred the instant complaint in complete contravention of their earlier representations and documents executed by them. The complainants have filed the instant false and frivolous complaint in order to mount undue pressure upon respondent in order to make it succumb to their unjust and illegitimate demands.
27. That it is pertinent to mention that the respondent had offered possession of the unit in question through letter of offer of possession dated 19.03.2018 to the complainants. The respondent had requested the complainants to remit the amounts mentioned in the said letter and obtain possession of the unit in question. However, the complainants did not come forward to obtain

possession of the unit in question. It is submitted that the complainants did not have adequate funds at the relevant time. The complainants intentionally lingered on the matter in order to suit their own subjective interests.

28. That it is submitted that the complainants consciously and maliciously chose to ignore the aforesaid letter issued by the respondent and refrained from obtaining possession of the unit in question. The complainants further withheld the amounts due and payable to the respondent. It would not be out of place to mention that the complainants have regularly defaulted in remittance of the due instalments on time to the respondent. It is respectfully submitted that the rights and obligations of complainants as well as respondent are completely and entirely determined by the covenants incorporated in the buyer's agreement which continues to be binding upon the parties thereto with full force and effect. Clause 10 of the buyer's agreement provides that time period for delivery of possession shall stand extended on the occurrence of delay for reasons beyond the control of the respondent. Furthermore, it is categorically expressed therein that in the event of any default or delay in payment of instalments as per the schedule of payments incorporated in the buyer's agreement, the time for delivery of possession shall also stand extended. It is submitted that the complainants as well as the original allottees have defaulted in timely remittance of the payments mentioned in the offer of possession and have further failed to obtain possession of the unit in question on time. Therefore, the date of delivery option is not liable to be determined in the manner sought to be done by the complainants.
29. That it is pertinent to take into reckoning that the complainants had obtained possession of the unit in question and a unit handover letter dated 27.08.2018 had been executed by the complainants. It is submitted that prior to execution of the unit handover letter, the complainants had satisfied



themselves regarding the measurements, location, dimension, development etc. of the unit in question. The complainants only after satisfying themselves with all the aspects including shape, size, location etc. of the unit in question, executed the unit handover letter stating that all the liabilities and obligations of respondent as enumerated in the allotment letter/buyer's agreement stood satisfied. Furthermore, the complainants have executed a conveyance deed dated 27.09.2018. Therefore, the transaction between the complainants and the respondent has been concluded in September, 2018 and no right or liability can be asserted by respondent or the complainants against the other. Institution of the present complaint after a lapse of more than three years from the date of registration of the Conveyance Deed in favour of the complainants is clearly indicative of the mischievous and malicious intent of the complainants. It is evident that that the present complaint is nothing but an afterthought and an attempt to realise unjust gain and to cause undue loss to the respondent. In any event, the complaint is undeniably barred by limitation and is liable to be dismissed on this ground alone. After execution of the conveyance deed between the parties, no right or obligation can be attributed/alleged by the complainants at this point of time against the respondent.

30. That the construction work was entrusted to Infrastructure Leasing and Finance Ltd. (hereinafter referred to as "IL & FS") for the project. However, the amount of workforce deployed at the Project site and the pace of work being carried out by IL&FS was not as agreed upon. Therefore, this was taken up by the opposite party, with IL & FS by way of various email and letters communications, between the years 2013 till 2018 pertaining to their lack of / inadequate performance due to which the project was getting delayed. That the reasons for this became clear when insolvency proceedings were admitted against IL & FS by the competent authority being the Hon'ble NCLT,

Mumbai in CP/4506/2018. A copy of the order dated 01.01.2019 passed by the Hon'ble NCLT, Mumbai, admitting the insolvency proceedings against IL & FS.

31. That it is pertinent to mention that the total consideration indicated in the corresponding paragraph of the complaint does not include the taxes, cesses and other charges that are liable to be paid by the complainants in accordance with the terms and conditions incorporated in the buyer's agreement.
32. That the complainants have purchased the unit in question from the original allottees after perusing all the relevant documents including buyer's agreement executed by the original allottees.
33. Written submissions are filed by the respondent and the same are taken on record and perused further.
34. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

35. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this

authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

36. 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 complainant at a later stage.

F. Objections raised by the respondent:-

F.I Objection regarding that the respondent has made an application for grant of occupation certificate before coming into force of RERA

37. The respondent-promoter has raised the contention that the provisions of the Act of 2016, are not applicable to the project as the respondent has already applied for obtaining occupation certificate from the competent authority on June 2017 i.e., before the notification of the Act and the rules

made thereunder. As per proviso to section 3 of Act of 2016, ongoing projects on the date of commencement of this Act i.e., 01.05.2017 and for which completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of three months from the date of commencement of this Act and the relevant part of the Act is reproduced hereunder: -

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:

38. The legislation is very clear in this aspect that a project shall be regarded as "ongoing project" until receipt of completion certificate. Since, no completion certificate has yet been obtained by the promoter-builder with regards to the concerned project, the plea advanced by it is hereby rejected.

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

39. The respondent stated that the complainants have alleged that the possession of the unit was to be given not later than August 2015 and therefore cause of action, if any, accrued in favour of the complainants in 2015. The counsel for the respondent also stated at bar that the conveyance deed of the unit has already been executed in favour of the complainant on 27.09.2018. The transaction between the parties stands concluded upon the execution of conveyance deed. The Authority is of the view that the complaint is not barred by limitation as per the order of Supreme Court in Suo moto Writ Petition (C) no. 3 of 2020. The present complaint was filed on 07.09.2022. The offer of possession was made on 19.03.2018 and is well within the limitation period.
40. 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.

41. 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.
42. 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.
43. 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."

44. 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.

45. 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.III Whether the complaint is barred by limitation or not?

46. 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.
47. 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.
48. In the present matter the cause of action arose on 19.03.2018 when the offer of possession was made by the respondent to the complainant. The complainant has filed the present complaint on 07.09.2022 which is 4 years

5 months and 19 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 05.03.2023 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.

G. Findings on the relief sought by the complainants

G.I Direct the respondent to pay delayed possession charges.

49. In the present case the original allottee and the respondent entered into a builder buyer agreement on 01.10.2011 following which they were allotted the unit vide allotment letter dated 09.06.2011. The complainants purchased the said unit in the project from original allottees and subsequently the original allottee transfer the said flat in the Name of Mrs. Sumika Gupta , Mr. Mukund Garg, Mrs. Shikha Sharma & Mrs. Meenu Mathur and “buyer’s agreement” was endorsed in favor of them on 07.08.2012 . Therefore the complainants became the 1st subsequent allottee and stepped into the shoes of an allottee on 07.08.2012.
50. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. 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.”

51. Clause 10 of the buyer's agreement October 2011 provides for handing over of possession and is reproduced below:

Clause 10 (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 3 (three) months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project.

52. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the unit within a period of 36 months from the start of construction. The date of start of construction is 09.08.2012 .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.
53. The Authority put reliance on the judgement of the **Hon'ble Appellate Tribunal in appeal no. 433 of 2022 tilted as Emaar MGF Land 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.

54. 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 09.11.2015.
55. **Admissibility of delay possession charges at prescribed rate of interest:**
The complainant are seeking delay possession charges however, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

56. 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.
57. 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%.
58. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:
- "(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
- Explanation. —For the purpose of this clause—*
- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*
 - (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*
59. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85 % by the respondent/promoters which is the same as is being granted to them in case of delayed possession charges.
60. 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 10 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., 09.08.2012 and the said time period of three months is allowed, therefore due date of possession comes out to be 09.11.2015.

61. 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 10.01.2018. The respondent offered the possession of the unit in question to the complainant on 19.03.2018. So, it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. The handover letter was given to the complainants on 27.08.2018. 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., 09.11.2015 till the date of offer of possession plus two months or handover of possession whichever is earlier.
62. 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., 09.11.2015 till the date of offer of possession plus two months or handover of possession whichever is earlier as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

G.II Direct the respondent to refund Rs. 1,17,045/- amount unreasonably charged in the name of "Other Charges" (which includes Rs 1,16,904/- for electricity connection charges and Rs. 14,160/- in the name of administrative charges) after execution of buyer's agreement between the respondent and complainants.

G.III Direct the respondent to return entire amount paid as GST Tax by complainant between 01.07.2017 to 12.04.2018.

G.IV Direct the complainant's bank to remove the lien marked over fixed deposit of Rs 1,30,563/- 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 respondent to assist the process of removing lien from complainant's bank by providing NOC for the same.

63. The above mentioned reliefs no. G.II, G.III and G.IV as sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other reliefs and these reliefs are interconnected.

64. It is important to note that the conveyance deed was executed between the parties on 27.09.2018. 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.

65. 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.
66. 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.V Direct the respondent to pay an amount of Rs. 55,000/- to the complainants as cost of the present litigation.

67. 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. Directions of the Authority:

68. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

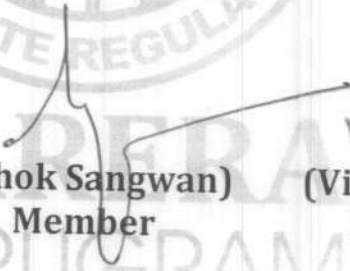
- i. The respondent shall pay interest at the prescribed rate i.e., 10.85 % per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 09.11.2015 till the date of offer of possession plus two months or handover of possession whichever is earlier as per 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




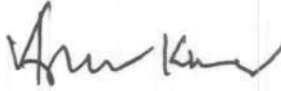
as credit compensation shall be deduced / adjusted towards the delay possession charges to be paid by the respondent.

- 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.
69. Complaint stands disposed of.
70. File be consigned to the 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