

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

Date of order: 08.05.2024

<b>NAME OF THE BUILDER</b>		<b>M/s Ramprastha Promoters &amp; Developers Private Limited</b>	
<b>PROJECT NAME</b>		<b>"THE EDGE TOWERS"</b>	
<b>S. No.</b>	<b>Case No.</b>	<b>Case title</b>	<b>APPEARANCE</b>
1.	CR/3162/2023	Kapil Poddar and Renuka Poddar V/S M/s Ramprastha Promoters & Developers Private Limited	Priyanka Aggarwal Advocate and R Gayathri Manasa Advocate
2.	CR/4059/2023	Shashikant Singh V/S M/s Ramprastha Promoters & Developers Private Limited	Shivali Advocate and R Gayathri Manasa Advocate

**CORAM:**

Ashok Sangwan

Member

**ORDER**

1. This order shall dispose of both the complaints titled as above filed before the authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the



project, namely, "THE EDGE TOWERS" (group housing complex) being developed by the same respondent/promoter i.e., M/s Ramprastha Promoters & Developers Private Limited. The terms and conditions of the buyer's agreement against the allotment of units in the project of the respondent/builder and fulcrum of the issues involved in both the cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of handover the physical possession of the allotted unit along with delayed possession charges and others.

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

<b>Project Name and Location</b>	<b>"The Edge Towers", Sector - 37D, Gurugram.</b>
<b>Project area</b>	<b>60.5112 acres</b>
<b>DTCP License No.</b>	<b>33 of 2008 dated 19.02.2008 valid upto 18.02.2025</b>
<b>Name of Licensee</b>	<b>Ramprastha Builders Pvt Ltd and 11 others</b>
<b>RERA Registration</b>	<b>Registered vide no. 279 of 2017 dated 09.10.2017 valid upto 31.12.2023</b>
<b>Occupation Certificate: - Not yet received</b>	
<b>Possession Clause: -</b>	
<b>15. POSSESSION</b>	
<b>(a) Time of handing over the Possession</b>	
<i>"Subject to terms of this clause and subject to the Allottee having complied with all the terms and condition of this Agreement and the Application, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by RAMPRASTHA. RAMPRASTHA proposed to hand over the possession of the Apartment by 31/08/2012 the Allottee agrees and understands that RAMPRASTHA shall be entitled to a grace period of hundred and twenty days (120) days, for applying and obtaining the occupation certificate in respect of the Group Housing Complex."</i>	



Sr. No	Complaint No., Case Title, and Date of filing of complaint	Reply status	Unit No.	Date of execution of apartment buyer's agreement	Due date of possession	Total Consideration / Total Amount paid by the complainants (In Rs.)	Relief Sought
1.	CR/3162/2023 Kapil Poddar and Renuka Poddar V/s M/s Ramprastha Promoters & Developers Private Limited Date of Filing of complaint- 24.07.2023	Reply received on 13.09.2023	1403, 14 <sup>th</sup> floor, tower/block- F (Page 43 of the complaint)	24.07.2010 (Page 39 of the complaint)	31.08.2012 [As per clause 15(a) of the apartment buyer's agreement]	TSC: - Rs.43,56,850/- (As per schedule of payment at page 66 of the complaint) AP: - Rs.40,40,323/- (As per payment receipts annexed with the complaint)	1.Possession along with delayed possession charges. 2.Not to force the complainants to sign any indemnity cum undertaking. 3.Provide the exact layout plan of the unit. 4. Not to charge monthly maintenance charges for a period of 12 months or more before actual possession. 5. Not to charge anything irrelevant which has not been agreed between the parties.



2.	CR/4059/2023  Shashikant Singh V/s M/s Ramprastha Promoters & Developers Private Limited  Date of Filing of complaint- 13.09.2023	Reply received on 28.11.2023	701, 7 <sup>th</sup> floor, tower/block-F (Page 26 of the complaint)	24.01.2021  (Page 22 of the complaint)	31.08.2012  [As per clause 15(a) of the apartment buyer's agreement]	TSC: - Rs.46,00,545/-  (As per schedule of payment at page 51 of the complaint)  AP: - Rs.38,90,748/-  (As per SOA on page 53 of complaint)	1.Possession along with delayed possession charges. 2.Litigation cost.
<p><b>Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:</b></p> <p><b>Abbreviation Full form</b> TSC- Total Sale consideration AP- Amount paid by the allottee(s)</p>							

4. The aforesaid complaints were filed against the promoter on account of violation of the agreement to sell against allotment of units in the upcoming project of the respondent/builder and for not handing over the possession by the due date, seeking award of possession along with delayed possession charges and other.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the

promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The facts of the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case *CR/3162/2023 titled as Kapil Poddar and Renuka Poddar V/s M/s Ramprastha Promoters & Developers Private Limited* are being taken into consideration for determining the rights of the allottee(s) qua delayed possession charges along with interest and others.

**A. Project and unit related details**

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

*CR/3162/2023 titled as Kapil Poddar and Renuka Poddar V/s M/s Ramprastha Promoters & Developers Private Limited*

S. N.	Particulars	Details
1.	Name of the project	"The Edge Towers", Sector 37D, Village Gadauli Kalan, Gurugram
2.	Project area	60.5112 acres
3.	Registered area	108894 sq. mt.
4.	Nature of the project	Group housing colony
5.	DTCP license no. and validity status	33 of 2008 dated 19.02.2008 valid upto 18.02.2025
6.	Name of licensee	Ramprastha Builders Pvt Ltd and 11 others
7.	Date of approval of building plans	12.04.2012 [As per information obtained by planning branch]
8.	Date of environment clearances	21.01.2010 [As per information obtained by planning branch]
9.	RERA Registered/ not registered	Registered vide no. 279 of 2017 dated 09.10.2017

10.	RERA registration valid up to	31.12.2023
11.	Unit no.	1403, 14 <sup>th</sup> floor, tower/block- F (Page 43 of the complaint)
12.	Unit area admeasuring	1310 sq. ft. (Page 43 of the complaint)
13.	Allotment letter dated	17.08.2010 (Page 30 of the complaint)
14.	Date of execution of apartment buyer agreement	24.07.2010 (Page 39 of the complaint)
15.	Possession clause	<p><b>15. POSSESSION</b></p> <p><b>(a) Time of handing over the Possession</b></p> <p>Subject to terms of this clause and subject to the Allottee having complied with all the terms and condition of this Agreement and the Application, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by RAMPRASTHA. RAMPRASTHA proposed to hand over <i>the possession of the Apartment by 31/08/2012 the Allottee agrees and understands that RAMPRASTHA shall be entitled to a grace period of hundred and twenty days (120) days, for applying and obtaining the occupation certificate in respect of the Group Housing Complex.</i></p> <p>(Page 53 of the complaint)</p>
16.	Due date of possession	31.08.2012 [As per possession clause mentioned in the buyer's agreement]
17.	Grace Period	Not Utilized
18.	Total sale consideration	Rs.43,56,850/- (As per schedule of payment at page 66 of the complaint)

19.	Amount paid by the complainants	Rs.40,40,323/- (As per payment receipts annexed with the complaint)
20.	Occupation certificate /Completion certificate	Not yet received
21.	Offer of possession	Not offered

**B. Facts of the complaint**

8. The complainants have made the following submissions: -

- I. That the complainants were allotted a unit bearing no. 1403, having 1310 sq. ft. super built-up area, 14th Floor, Tower-F, in project of the respondent named "The Edge Towers" at Sectors 37D, Gurugram vide allotment letter dated 17.08.2010 for a total sale consideration of Rs.43,56,850/-. Thereafter, an apartment buyer's agreement was executed between the complainants and respondent on 22.07.2010.
- II. That as per clause 15(a) of the apartment buyer's agreement, the respondent had to deliver the possession of the apartment by 31.08.2012.
- III. That at the time of execution of the agreement, the complainants had objected towards the highly titled and one-sided clauses of the agreement. However, the respondent turned down the concerns of the complainants and curtly informed that the terms and conditions in the agreement are standard clauses and thus, no change can be made.
- IV. That as per the demands raised by the respondent, based on the payment plan, the complainants have already paid a total sum of Rs.40,40,323/- towards the said unit.
- V. That the complainants went to the office of respondent several times and requested them to allow them to visit the site, but it was never allowed saying that they do not permit any buyer to visit the site

during construction period.

- VI. That the complainants contacted the respondent on several occasions, but the respondent was never able to give any satisfactory response to the complainants regarding the status of the construction and was never definite about the delivery of the possession.
- VII. That the respondent has completely failed to honour its promises and has not provided the services as promised and agreed through the brochure, BA and the different advertisements released from time to time.
- VIII. That the complainants are entitled to get delay possession charges with interest at the prescribed rate from date of application/payment to till the realization of money under section 18 & 19(4) of Act. The complainants are also entitled for any other relief which they are found entitled by the Authority.
- IX. That the complainants after losing all the hope from the respondent company, having their dreams shattered of owning an apartment and also losing considerable amount, are constrained to approach this Authority for redressal of their grievance.

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

9. The complainants have sought following relief(s):
  - i. Direct the respondent to handover the possession of the unit and to pay delay possession charges at prescribed rate from the due date of possession till actual handing over of possession.
  - ii. Direct the respondent to not to force the complainants to sign any indemnity cum undertaking as a precondition for signing the conveyance deed.
  - iii. Direct the respondent to provide the exact layout plan of the unit.



- iv. Direct the respondent to not to charge monthly maintenance charges for a period of 12 months or more before giving actual possession of the unit.
  - v. Direct the respondent to not to charge anything irrelevant which has not been agreed between the parties.
10. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent.**

11. The respondent has contested the complaint on the following grounds.
- i. That the complainants had already filed a complaint bearing no. CC/75/2023 before the NCDRC, New Delhi with respect to the subject property involved in the present complaint. Therefore, the principle of sub-judice is attracted to the present matter at hand and hence the complaint is not maintainable before this Authority.
  - ii. That the present complaint has been filed by the complainants in complaint no. 3162 of 2023 before this authority inter alia praying for possession of an apartment bearing no. F-1403, 14th floor in project "EDGE" of the respondent along with delay possession charges.
  - iii. That filing such a complaint after a lapse of such a long time made crystal clear the status of the complainants as an investor who merely invested in the present project with an intention to draw back the amount as an escalated and exaggerated amount later.
  - iv. That the delay in delivering the possession of the apartment to the complainants has been attributed solely because of reasons beyond the control of the respondent.

- v. Further, as per clause 15 (a) of the agreement shall not be read in isolation but have to be read in light of other clauses of the agreement. Clause 15(a) of the agreement is subject to clause 31 of the agreement. Clause 15(a) stipulates the time for handing over of the possession which is subject to Force Majeure circumstances which clearly indicate the nature of agreement entered into between the parties, whereby, the stipulated date of delivery is not a strict and final date but merely a tentative date which is further subject to several factors involved.
- vi. That the date of possession shall get extended automatically on account of delay caused due to reasons which are beyond the control of the developers/respondent. Further, the contingency of delay in handing over the apartment within the stipulated time was within the contemplation of the parties at the time of executing the agreement as the parties had agreed vide clause 17(a) that in the eventuality of delay in handing over possession beyond the period stipulated in clause 15(a) of the agreement, the allottee will be compensated with Rs 5/- per sq. ft. per month of super area. This part of compensation was specifically consented to and was never objected at any earlier stage, not while signing the agreement or any time after that.
- vii. That the delay has occurred only due to unforeseeable and uncontrollable circumstances which despite of best efforts of the respondents hindered the progress of construction, meeting the agreed construction schedule resulting into unintended delay in timely delivery of possession of the apartment for which the respondent cannot be held accountable. However, the complainant despite having knowledge of happening of such force majeure eventualities and despite agreeing to extension of time in case the

delay has occurred as a result of such eventualities has filed this frivolous, tainted and misconceived complaint in order to harass it with a wrongful intention to extract monies.

- viii. That the said terms and conditions of the agreement were executed only after mutual discussion and decision and agreement of both the parties and in such a case, one party cannot withdraw itself from the boundation of the agreement. That once the said agreement was duly signed and accepted by the both the parties which contains detailed terms and conditions the parties are obligated to abide by it and either of parties cannot divert itself from the obligation of performance of their parts manifested in the agreement on it owns whims and fancies and as per their own convenience. It is to be noted that the performance and non -performance of the agreement affects both the parties equally and sometimes one party is at a greater disadvantage when one party abstains from performance of its part.
- ix. That the respondent who is incurring higher expenses due to escalation in the cost of project due to time overrun. The respondents have utilized all the resources towards completion of the project and no monies were diverted by it towards any other project as falsely alleged by him. That the respondents have strived at its best to battle the obstacles so that the delivery of the possession be made as sooner as possible despite of the several unforeseeable hindrances mentioned herein below posed, since customer satisfaction has always been pivotal and a priority to the respondents. It is pertinent to note here that despite the best efforts by the respondent to hand over timely possession of the said flat booked by the complainants, the respondents could not do so due to reasons and circumstances beyond

its control. It was only on account of the following reasons/circumstances that the project got delayed and timely possession could not be handed over to the complainants.

- x. The project faced various roadblocks and hindrances including approvals from different authorities which were beyond the control of the respondent and which in turn lead to unforeseeable delay in the construction/completion of the project and hence handing over of the possession of the flat to the complainants.
- xi. In addition to the above, active implementation by the Government of alluring and promising social schemes like National Rural Employment Guarantee Act ("NREGA") and Jawaharlal Nehru National Urban Renewal Mission ("JNNURM"), further led to sudden shortage of labour/ workforce in the real estate market as the available labour were tempted to return to their respective states due to the guaranteed employment under the said NREGA and JNNURM Schemes. The said factor further created a vacuum and shortage of labour force in the NCR region. Large numbers of real estate projects, including the present project of the opposite party herein, were struggling hard to cope with their construction schedules, but all in vain.
- xii. The respondents faced extreme water shortage, which was completely unforeseen by any of the Real Estate Companies, including the respondent, in the NCR region. The respondent, who was already trying hard to cope up with the shortage of labour, as mentioned above, was now also faced with the acute shortage of water in the NCR region. The said factor of shortage of water directly affected the construction of the project at the site. To make the conditions worse, the Hon'ble High Court of Punjab and Haryana vide Order dated

16.07.2012 restrained the usage of ground water and directed to use only treated water from available Sewerage Treatment Plants (hereinafter referred to as "STP"). As the availability of STP, basic infrastructure and availability of water from STP was very limited in comparison to the requirement of water in the ongoing constructions activities in Gurugram District, it became difficult to timely complete the construction activities as per the schedule. The availability of treated water to be used at construction site was very limited and against the total requirement of water only 10-15% of required quantity was available at construction sites. In furtherance to the directions of Hon'ble High Court of Punjab and Haryana, the Opposite Party received a Letter bearing memo no 2524 dated 01.09.2012 from the Deputy Commissioner, Gurugram, Haryana, informing to it about the complete ban on the use of underground water for construction purposes and use of only recycled water being permitted for the said purposes.

- xiii. That the respondent neither had any control over the said directions/orders from the Hon'ble High Court nor had any control over the shortage of water in the NCR region, which in turn led to the delay in the completion and hence the handing over of the possession of the flat to the complainants.
- xiv. In addition to the above, there has been a heavy shortage of supply of construction material i.e. river sand and bricks etc. through out of Haryana, pursuant to order of Hon'ble Supreme Court of India in the case Deepak Kumar etc. v. State of Haryana (I.A. No. 12-13 of 2011 in SLPs (C) nos. 19628-29 of 2009 with SLPs (C) No. 729-731/2011, 21833/2009, 12498-499/2010, SLP(C) CC... 16157/2011 & CC

18235/2011 dated 27 February 2012) and correspondingly, the construction progress slackened. This also caused a considerable increase in cost of materials. It is noteworthy that while multiple project developers passed on such incremental costs attributable to the above reasons to the buyers, the management of the respondent assured its customers that it will not and has held fast on its promise by not passing on any of such costs to the buyers.

12. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority**

The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I Territorial jurisdiction**

13. 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**

14. 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) The promoter shall-*

*(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

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

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

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

**F. I Objection regarding the complainants being investor.**

16. The respondent has taken a stand that the complainants are investors and not consumer. Therefore, they are not entitled to the protection of the Act and are not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumer of the real estate sector. It is settled principle of interpretation that the

preamble is an introduction of a statute and states main aims and objects of enacting a statute but at the same time the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainants are buyers and paid total price of Rs.40,40,323/- to the promoter towards purchase of an apartment in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

*"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment application for allotment, it is crystal clear that the complainants are allottees as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the



contention of promoter that the allottees being investor are not entitled to protection of this Act also stands rejected.

**F.II Objections regarding force majeure.**

17. The respondent/promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as shortage of labour force in the NCR region, ban on the use of underground water for construction purposes, heavy shortage of supply of construction material etc. However, all the pleas advanced in this regard are devoid of merit. First of all, the possession of the unit in question was to be offered by 31.08.2012. Further, the events alleged by the respondent do not have any impact on the project being developed by the respondent. Furthermore, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

**F. III Objection regarding maintainability of complaint.**

18. The respondent has contended that the present complaint is not maintainable under the principle of sub-judice as the complainants have already filed a complaint bearing no. CC/75/2023 before the NCDRC, New Delhi. However, it is evident from the order dated 07.02.2024 in the above said complaint that the complainants have filed an application bearing no. IA/1090/2024 seeking withdrawal from the complaint and the said request was allowed by the NCDRC, New Delhi vide order dated 07.02.2024. Therefore, the objection of the respondent w.r.t the maintainability of the present complaint stands rejected.

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

**G.1 Direct the respondent to handover the possession of the unit and to pay delay possession charges.**

19. 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."*

*(Emphasis supplied)*

20. Clause 15(a) of the apartment buyer's agreement dated 24.07.2010 provides for handing over of possession and is reproduced below:

**15. POSSESSION**

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

*"Subject to terms of this clause and subject to the Allottee having complied with all the terms and condition of this Agreement and the Application, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by RAMPRASTHA. RAMPRASTHA proposed to hand over the possession of the Apartment by 31/08/2012 the Allottee agrees and understands that RAMPRASTHA shall be entitled to a grace period of hundred and twenty days (120) days, for applying and obtaining the occupation certificate in respect of the Group Housing Complex."*

21. The authority has gone through the possession clause of the agreement and observes that this is a matter very rare in nature where builder has specifically mentioned the date of handing over possession rather than specifying period from some specific happening of an event such as signing of apartment buyer agreement, commencement of construction, approval of building plan etc. This is a welcome step, and the authority appreciates such firm commitment by the promoter regarding handing

over of possession but subject to observations of the authority given below.

22. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainant not being in default under any provisions of these agreements and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by the allottees in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.
23. **Due date of handing over possession:** The promoter has proposed to hand over the possession of the unit by 31.08.2012 and further provided in agreement that promoter shall be entitled to a grace period of 120 days for applying and obtaining occupation certificate in respect of group housing complex. As a matter of fact, the promoter has not applied for occupation certificate within the time limit prescribed by

the promoter in the apartment buyer's agreement. As per the settled law, one cannot be allowed to take advantage of his own wrongs. Accordingly, this grace period of 120 days cannot be allowed to the promoter at this stage.

24. **Admissibility of delay possession charges at prescribed rate of interest:** 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.

25. 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.
26. 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., 08.05.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
27. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which

the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

- (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."*

28. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.85% by the respondent /promoter which is the same as is being granted to the complainants in case of delayed possession charges.
29. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. The authority has observed that the apartment buyer's agreement was executed on 24.07.2010 and the due date of possession was specifically mentioned in the apartment buyer's agreement as 31.08.2012. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession is 31.08.2012. The respondent has failed to handover possession of the subject apartment till date of this order. Further, the authority observes that there is no document on record from which it can be ascertained as to whether the respondent has applied for occupation certificate or what is the status of construction

of the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as to the allottees.

30. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the complainants are entitled to delay possession charges at the prescribed rate i.e., @10.85% p.a. w.e.f. 31.08.2012 till offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

**G. II Direct the respondent to to not to force the complainants to sign any indemnity cum undertaking as a precondition for signing the conveyance deed.**

31. The respondent is further directed not to place any condition or ask the complainants to sign an indemnity of any nature whatsoever, which is prejudicial to their rights as has been decided by the authority in complaint bearing no. **4031 of 2019** titled as **Varun Gupta V. Emaar MGF Land Ltd.**

**G. III Direct the respondent to provide the exact layout plan of the unit.**

32. As per Section 19(1) of the Act, the allottee is entitled to obtain information relating to sanctioned plans, layout plan along with specifications, approved by the competent authority and such other information as provided in this Act or rules and regulations made thereunder or the agreement for sale signed with the promoter. Therefore, in view of the same, the respondent is directed to provide the exact layout plan of the unit in question to the complainant within a period of 1 month from the date of this order.

**G. IV Direct the respondent to not to charge monthly maintenance charges for a period of 12 months or more before giving actual possession of the unit.**

33. **Maintenance charges:** - This issue has already been dealt by the authority in complaint titled as *Varun Gupta Vs. Emaar MGF Land Limited (supra)*, wherein, it is held that the respondent is right in demanding advance maintenance charges at the rates prescribed in the builder buyer's agreement at the time of offer of possession. However, the respondent shall not demand the advance maintenance charges for more than one year from the allottees even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.

**G. V Cost of litigation.**

34. The complainant in complaint bearing no. CR/4059/2023 is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation and 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 and 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. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation and litigation expenses.

**H. Directions of the authority**

35. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of

obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to pay interest to the complainant(s) against the paid-up amount at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 31.08.2012 till offer of possession plus 2 months after obtaining completion occupation certificate from the competent authority or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- ii. The arrears of such interest accrued from 31.08.2012 till the date of this order shall be paid by the promoter to the allottee(s) within a period of 90 days and the interest for every month of delay shall be paid by the promoter to the allottee(s) before 10th of the subsequent month as per rule 16(2) of the rules.
- iii. The respondent is directed to handover possession of the unit/flat in question to the complainant(s) in terms of the apartment buyer's agreement executed between the parties.
- iv. The rate of interest chargeable from the allottee(s) 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 allottee(s), in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- v. The complainant(s) are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- vi. The respondent is further directed not to place any condition or ask the complainants to sign an indemnity of any nature




whatsoever, which is prejudicial to their rights as has been decided by the authority in complaint bearing no. **4031 of 2019** titled as **Varun Gupta V. Emaar MGF Land Ltd.**

- vii. The respondent shall not charge anything from the complainant(s) which is not part of the buyer's agreement.
  - viii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
36. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
  37. Complaint stands disposed off.
  38. File be consigned to registry.

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.05.2024



**(Ashok Sangwan)**  
Member

**HARERA**  
GURUGRAM