

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

Complaint no. : 4643 of 2023  
Date of order : 25.09.2024

1. Sarabdeep Khanna  
2. Ashish Khanna  
**Both R/o:** Flat no. 002, Tower-7,  
Unitech The Palms, South City-1,  
Gurugram-122002.

**Complainants**

**Versus**

M/s Emaar MGF Land Ltd.  
**Office at:** - House 28, Kasturba Gandhi Marg,  
New-Delhi-110001.

**Respondent**

**CORAM:**  
Shri. Ashok Sangwan

**Member**

**APPEARANCE:**  
Jagdeep Kumar (Advocate)  
Dhruv Rohtagi (Advocate)

Complainants  
Respondent

**ORDER**

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

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

**A. Unit and project related details**

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

Sr. No.	Particulars	Details
1.	Name of the project	"Gurgaon Greens", Sector-102, Village Dhankot, Gurugram.
2.	Area of project	95829.92 sq.mtrs.
3.	Nature of project	Group Housing Colony.
4.	DTCP License no.	Licence no. 75 of 2012 Dated-31.07.2012
5.	RERA registered	Registered 139/2017/2294 dated 05.12.2017
6.	Unit no.	GGN-04-0502, Floor-5 <sup>th</sup> , Tower-04 (As on page no. 27 of complaint)
7.	Unit area	1650 sq.ft [Super-Area] (As on page no. 27 of complaint)
8.	Allotment letter	25.01.2013 (As on page no. 20 of complaint)
9.	Date of execution of buyer's agreement	26.06.2013 (As on page no. 24 of complaint)
10.	Possession clause	<b>Clause 14 POSSESSION</b>

		<p><b>(a) Time of handing over the Possession'</b></p> <p><i>Subject to terms of this clause and barring force majeure conditions, and subject to the Allottee having complied with all the terms and conditions of this Agreement, and not being in default under any of 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 <b>within 36 (Thirty Six) months from the date of start of construction</b> ,, 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 <b>grace period of 5 (five) months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project.</b></i></p> <p><i>[Emphasis supplied]</i></p>
11.	Due date of possession	28.11.2016  [Calculated 36 months from date of start of construction i.e., 28.06.2013 plus grace period of 5 months]
12.	Total sales consideration	Rs.99,36,551/- (As per S.O.A dated 27.09.2023 on page no. 77 of complaint)
13.	Amount paid by the complainants	Rs.99,36,551/- (As per S.O.A dated 27.09.2023 on page no. 77 of complaint)
14.	Occupation certificate	16.07.2019

		(As on page no. 145 of reply)
15.	Offer of possession	18.07.2019 (As on page no. 80 of complaint)
16.	Unit handover letter	12.09.2019 (As on page no. 85 of complaint)
17.	Conveyance deed	05.12.2019 (As on page no. 168 of reply)

**B. Facts of the complaint**

3. The complainants have made the following submission: -

- I. That the complainants are law abiding citizens and the respondent is a real estate development company incorporated under the Companies Act, 1956, working in field of construction and development of residential as well as commercial projects across country in the name of Emaar MGF Land Limited.
- II. That somewhere in the month of January 2012, the respondent approached the complainants with an offer to invest and buy a flat in the proposed project. On 30.01.2012, the complainants had a meeting with respondent where the respondent explained and highlighted the amenities of the project like Joggers Park, Joggers Track, Rose garden, 2 swimming pool, amphitheater, etc., and told that towers 03, 14, 17, and 19 are only available for advance booking and each tower will have G+13 floors and on every 13<sup>th</sup> floor of these towers there will be a penthouse constituting floor no 13<sup>th</sup> and 14<sup>th</sup>. Relying on these details the complainants enquire the availability of flat on 5<sup>th</sup> floor in Tower 04 which was a unit an area of 1650 sq ft.

- III. That the complainants booked a residential flat bearing no. 0502 on 5<sup>th</sup> Floor in Tower - 04 admeasuring approximate super area of 1650 sq. ft. and accordingly paid Rs. 7,50,000/- as booking amount on 24.01.2012.
- IV. That in the said application form, the price of the flat was agreed at the rate of Rs. 4530/- per sq. ft. At the time of execution of the said application form, it was agreed and promised by the respondent that there shall be no change, amendment or variation in the area or sale price of the said flat from the area or the price committed by the respondent in the said application form or agreed otherwise.
- V. That on 25.01.2013, the respondent issued a provisional allotment letter which consisted many illegal terms and conditions wholly in favour of the respondent. Thereafter on 26.06.2013, a builder buyer agreement was executed on similar illegal, arbitrary, unilateral and discriminatory terms.
- VI. That as per the Clause - 14 of the builder buyer's agreement dated 26.06.2013, the respondent had agreed and promise to complete the construction of the said flat and deliver its possession within a period of 36 months with a five (5) months grace period thereon from the date of start of construction. However the respondent has breached the terms and failed to fulfill its obligations and has not delivered possession of the unit within the agreed time frame. The proposed possession date as per Buyer's Agreement was due on 14.06.2016.
- VII. That the respondent had raised various demands for the payment of installments from the complainants and the same were duly paid and satisfied by the complainants.
- VIII. That as per Annexure III (Schedule of Payment) of the Buyer's Agreement, the sales consideration of the unit was Rs.91,37,925/- (including the charges towards Basic Price - Rs.74,74,525/-, Govt Charges (EDC &IDC) - 5,70,900/-, Club Membership - Rs. 50,000/- , IFMS - Rs 82,500/-, Car Park

- Rs 3,00,000/-, PLC for Corner - Rs 82,500/- and PLC for Central Green Rs 4,95,000/-) exclusive of Service Tax and GST, but later at the time of possession, the respondent added Rs 30,076/- and increased the sale consideration to Rs.91,68,001/- without any reason for the same and also charged IFMS of Rs 82,500/- separately, whereas IFMS charges were already included in the sale consideration and in that way the respondent has twice charged IFMS from the allottees. The respondent had increased the sale consideration by Rs.1,12,575/- (Rs. 30075 + Rs. 82500) without any reason, which is illegal, arbitrary, unilateral and unfair trade practice.
- IX. That the complainants have paid the entire sale consideration along with applicable taxes to the respondent for the unit. As per the statement issued by the respondent, the complainants have already paid Rs.99,38,542/- towards the total sale consideration and applicable taxes as on today and now nothing is pending to be paid on the part of the complainants.
- X. That on the due date for handing over possession of said unit was 28.06.2016. The complainants have approached the respondent time and again for inquiring the status of delivery of possession but none had bothered to provide any satisfactory answer about the completion and delivery of the unit.
- XI. That the offer of possession offered by the respondent through "Intimation of Possession" was not a valid offer of possession because respondent offered the possession on 18.07.2019 with stringent condition to pay certain amounts which were never a part of the buyer's agreement and at the time of offer of possession, the respondent did not adjust the penalty for delay possession as per the Act 2016. The respondent also demanded an Indemnity-cum-Undertaking along with final payment, which is illegal



and unilateral demand and also it did not even allow the complainants to visit the property before clearing the final demand.

- XII. The respondent demanded two year advance maintenance charges which was never agreed under the buyer's agreement and also demanded a lien marked FD of Rs.1,72,643/- on the pretext of future liability against HVAT for the period of (01-April-2014 to 30-June-2017) which is also a unfair trade practice. The respondent left no other option to the complainants but to pay the Two year maintenance charges amounting to Rs.1,44,540/- and submit a Fixed Deposit of Rs.1,72,643/- with a lien marked in favour of the respondent and Rs.3,37,400/- towards e-Stamp duty and Rs.45,000/- towards registration charges in addition to final demand raised by respondent along with the offer of possession. The respondent hand over the physical possession of the unit to the complainants on 12.09.2019.
- XIII. That the GST Tax which has come into force on 01.07.2017, it is a fresh tax. The possession of the apartment was supposed to be delivered to complainants on 28.06.2016, therefore, the tax which has come into existence after the due date of possession, thus this extra cost should not be levied on the complainants, since the same would not have fallen on the complainants if the respondent had offered the possession of the unit within the time stipulated in the builder buyer agreement.
- XIV. That the cause of action accrued in favour of the complainants and against the respondent on 30.01.2012 when the complainant had booked the unit and it further arose when the respondent failed /neglected to deliver the unit on the proposed delivery date. The cause of action is continuing and is still subsisting on day-to-day basis.

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

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

- a) Direct the respondent to pay interest at the rate of 18% on account of delay in offering possession on Rs.99,38,542/- paid by the complainants from the date of payment till the date of delivery of possession;
  - b) Direct the respondent to return Rs.1,12,575/- unreasonably charged by the respondent by increasing the sale price after execution of the Buyer's Agreement.
  - c) Direct the respondent to return entire amount paid as GST Tax by the complainants between 01.07.2017 to 28.12.2018.
  - d) Direct the complainants' bank to remove the lien marked over Fixed Deposit of Rs.1,72,643/- in favour of the respondent on the pretext of future payment of HVAT for the period of (01.04.2014 to 30.06.2017). and also order to direct respondent to assist the process of removing lien by providing NOC for the same.
  - e) Direct the respondent to pay an amount of Rs.55,000/- to the complainants as cost of the present litigation.
5. 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.**

6. The respondent has contested the complaint on the following grounds: -
- I. That the complainants are estopped by their own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. It is submitted that the complainants have been enjoying the said unit without any demur/protest. That the possession was offered to the complainants on 18.07.2019 and the unit was handed over on 12.09.2019 and thereafter, a conveyance deed dated 05.12.2019 was also executed. The lack of bonafide of the complainants is apparent that after conclusion of the entire transaction on the execution of the Conveyance Deed and the



completion of all obligations of the respondent, they chose to remain silent for such a long period and have approached this Authority to extort money.

- II. That the present complaint is not maintainable in view of the fact that the Conveyance Deed has already been executed and the respondent is absolved of all or any liability towards delay possession charges, even in terms of Section 11(4) of the Real Estate (Regulation and Development) Act, 2016.
- III. That the complainants, upon the handover of possession and execution of the Conveyance Deed, the allottee has accorded his satisfaction to the services provided by the developer and voluntarily discharged the developer of all its liabilities under the Buyer's Agreement. The Unit Handover Letter dated 12.09.2019, executed by the complainants clearly records ***"Upon acceptance of possession, the liabilities and obligations of the Company as enumerated in the allotment letter/ Agreement executed in favour of the Allottee stand satisfied"***. Thus, the respondent is discharged of all liabilities, including the claim of Delay Possession Charges, which are being claimed by way of present complaint.
- IV. That the complainants have even accorded their satisfaction and non claim of compensation in the recitals of the Conveyance Deed dated 05.12.2019.
- V. Thus, the complainants cannot now be allowed to retract from their affirmations and claim more compensation, that has already been granted to them. The complainants were fully satisfied by the compensation of Rs.91,527/- credited on account of Anti-profiting and Rs.3,93,017/- credited on account of delay in IOP, by the respondent to the complainants on 12.04.2019 and 18.07.2019 respectively and never raised any grievance to the same.

- VI. That the instant complaint is barred by limitation. The complainants have received the offer of possession on 18.07.2019, on which the cause of action for claiming the delay compensation has arisen. The present complaint has been filed on 01.10.2023, after a gross delay of more than 4 years. The complainants cannot be allowed to sleep over its rights indefinitely and wake up at any time as he pleases and the respondent cannot be held at gunpoint for indefinite period of time.
- VII. That the complainants had approached the respondent and expressed an interest in booking an apartment in the residential group housing colony developed by the respondent known as "Gurgaon Greens" situated in Sector - 102, Village Dhankot, Tehsil & District Gurgaon.
- VIII. That thereafter the complainants vide an application form, applied to for provisional allotment of a unit in the project. The complainants, in pursuance of the aforesaid application form, were allotted an unit bearing no GGN-04-0502, Tower-04 admeasuring 1650 sq. ft., vide provisional allotment letter dated 25.01.2013. The complainants consciously and wilfully opted for an Instalment Payment 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.
- IX. That thereafter, Buyer's Agreement dated 26.06.2013 was executed between the complainants and the respondent. It is pertinent to note that the delay in signing the Buyer's Agreement was solely attributable to the complainants, who had to be sent numerous reminders for the execution of the Buyer's Agreement.
- X. That it is pertinent to mention that the complainants were irregular in payment of instalments. The respondent was constrained to issue

- reminders and letters to them requesting them to make payment of demanded amounts.
- XI. That the complainants are not "Allottees" but are Investors who have booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale. The apartment in question has been booked by the complainants as a speculative investment and not for the purpose of self-use as their residence. Therefore, no equity lies in favour of the complainants.
- XII. That Clause 14 of the Buyer's Agreement provides that subject to the Allottees having complied with all the terms and conditions of the Buyer's Agreement, and not being in default of the same, possession of the unit would be handed over within 36 months plus grace period of 5 months, from the date of start of construction. It is submitted that the grace period of 5 months cannot be excluded and is liable to be included in terms of the Judgment of the Hon'ble Appellate Tribunal in **Emaar MGF Land Ltd. Vs Laddi Paramjit Singh**, bearing **Appeal No. 122 of 2022**, decided on **16.03.2023**. It is further provided in the Buyer's Agreement that time period for delivery of possession shall stand extended on the occurrence of delay for reasons beyond the control of the respondent.
- XIII. That despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. The respondent had applied for Occupation Certificate on 11.02.2019. Occupation Certificate was thereafter issued by the concerned statutory authority in favour of the respondent on 16.07.2019. It is pertinent to note that once an application for grant of Occupation Certificate is submitted for approval in the office of the concerned statutory authority, the respondent ceases to have any control over the same. The grant of sanction of the Occupation Certificate

is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence. Therefore, the time period utilised by the statutory authority to grant occupation certificate is necessarily required to be excluded from computation of the time period utilised for implementation and development of the project.

- XIV. It is submitted that the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. It is further submitted that merely because the Act applies to ongoing projects which are registered with the authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainants for seeking interest cannot be called in to aid in derogation and ignorance of the provisions of the Buyer's Agreement. The interest is compensatory in nature and cannot be granted in derogation and ignorance of the provisions of the Buyer's Agreement. It is further submitted that the interest for the alleged delay demanded by the complainants is beyond the scope of the Buyer's Agreement. The complainants cannot demand any interest or compensation beyond the terms and conditions incorporated in the Buyer's Agreement.
- XV. That the complainants were offered possession of the unit in question through letter of offer of possession dated 18.07.2019 and subsequently, several reminders were sent to take the possession. That an indemnity cum undertaking for possession dated 31.07.2019 was also executed by the complainants. The complainants were called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit in question to the complainants. However, the complainants approached the respondent with request for payment of compensation for the alleged

delay in utter disregard of the terms and conditions of the Buyer's Agreement. The respondent explained to the complainants that they are not entitled to any compensation in terms of the Buyer's Agreement on account of default in timely remittance of instalments as per schedule of payment incorporated in the Buyer's Agreement. However, yet the respondent credited a sum of Rs. 3,93,017/- as delay compensation to the complainants and Rs.91,527 on account of anti-profiting, which was duly accepted by the complainants without any demur or protest.

- XVI. That the complainants approached the respondent requesting it to deliver the possession of the unit in question. A unit handover letter dated 12.09.2019 was executed by the complainants, specifically and expressly agreeing that the liabilities and obligations of the respondent as enumerated in the allotment letter or the Buyer's Agreement stand satisfied. No cause of action has arisen or subsists in favour of the complainants to institute or prosecute the instant complaint. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.
7. 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**

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

**E.1 Territorial jurisdiction**



9. 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**

10. 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 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;*

11. 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.

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

**F. I Whether the complainant can claim delayed possession charges after execution of the conveyance deed?**

12. The respondent stated that the conveyance deed of the unit has already been executed in favour of the complainants on 05.12.2019 and the transaction between the parties stands concluded upon the execution of conveyance deed.
13. The respondent has argued that upon the execution of the conveyance deed, the relationship between the parties is considered concluded, precluding



any further claims or liabilities by either party. Consequently, the complainant is barred from asserting any interest in light of the circumstances of the case.

14. In order to comprehend the relationship between the allottee and the promoter, it is essential to understand the definition of a "deed." A deed is a formal, written document that is executed, signed, and delivered by all parties involved in the contract, namely the buyer and the seller. It is a legally binding document that incorporates terms enforceable by law. For a sale deed to be valid, it must be written and signed by both parties. Essentially, a conveyance deed involves the seller transferring all rights to legally own, retain, and enjoy a particular asset, whether immovable or movable. In the present case, the asset in question is immovable property. By signing a conveyance deed, the original owner transfers all legal rights pertaining to the property to the buyer in exchange for valid consideration, typically monetary. Thus, a "conveyance deed" or "sale deed" signifies that the seller formally transfers all authority and ownership of the property to the buyer.
15. That the execution of a conveyance deed transfers only the title and interest in the specified immovable property (in this case, the allotted unit). However, the conveyance deed does not terminate the relationship between the parties or absolve the promoter of their obligations and liabilities concerning the unit, despite the transfer of title and interest to the allottee upon execution of the conveyance deed.
16. 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 her title perfected by executing the conveyance deed which is the statutory right of the allottees. 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 the 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 rights 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 titles to the flats for which they have paid valuable consideration. In this backdrop, the simple question which we need to address is whether a flat buyer who espouses 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 in which the NCDRC has espoused. We cannot countenance that view.*

17. The Authority has already taken a view in Cr. No. 4031/2019 and others titled 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 complainants never gave up their statutory right to seek delayed possession charges as per the provisions of the said Act.
18. Upon reviewing all relevant facts and circumstances, the Authority determines that the complainants/allottees retain the right to seek compensation for delays in possession from the respondent-promoter, despite the execution of the conveyance deed.

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

19. 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 Authority 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 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 of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.
20. 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 may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
21. In the present matter the cause of action arose on 18.07.2019 when the offer of possession was made by the respondent. The complainants have filed the present complaint on 27.10.2023 which is 4 years 3 months and 9 days from the date of cause of action. In the present case the period of delay in filing of the case needs to be calculated after taking into account the exclusion period from 15.03.2020 to 28.02.2022. In view of the above, the Authority is of the view that the present complaint has been filed within a reasonable time period and is not barred by the limitation.

**F.III. Objection regarding complainants of being investors and not allottees.**

22. The respondent has taken a stand that the complainants are investors and not consumers, therefore, they are not entitled to the protection of the Act and thereby 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 consumer of the real estate sector. The authority observed that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that 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 have paid total price of **Rs. 99,36,551/-** to the promoter towards purchase of an unit in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

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

23. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainants, it is crystal clear that they are allottees as the subject unit is 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. 000600000010557 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 investors are not entitled to the protection of this Act stands rejected.

**G. Findings regarding relief sought by the complainants:**

**G. I Direct the respondent to pay interest at the rate of 18% on account of delay in offering possession on Rs.99,38,542/- paid by the complainants from the date of payment till the date of delivery of possession;**

24. In the present complaint, the complainants intends to continue with the project and are seeking possession of the unit and delayed possession charges as per section 18(1) of the Act and the same is reproduced below for ready reference:

**"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)

25. Clause 14(a) of the apartment buyer's agreement (in short, the agreement) dated 26.06.2013 provides for handing over possession and the same is reproduced below:

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

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

26. The buyer's agreement was executed on 26.06.2013. As per clause 14 (a) of the agreement the respondent was to offer the possession of the unit to the

allottees within 36 months from the date of start of construction. The date of start of construction as per the Statement of Accounts as on 27.09.2023 at page no. 77 of complaint is 28.06.2013. Thus, the Authority have calculated 36 months from the date of start of construction, also the grace period of 5 months is allowed to the respondent/promoter. Therefore, the due date comes out to be 28.11.2016.

27. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants 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.

28. 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.
29. 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., 25.09.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.



30. 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."*

31. 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 Buyer's Agreement was executed on 26.06.2013 between the complainants and the respondent. The possession of the subject unit was to be offered within a period of 36 months plus 5 months from date of commencement of construction. The Authority calculated due date of possession from the date of start of construction i.e., 28.06.2013 along with a grace period of 5 months which comes out to be 28.11.2016. The respondent has failed to handover possession of the subject unit on the due date.

32. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The Authority is of the considered view that there is delay on the part of the respondent to offer of possession



of the allotted unit to the complainants as per the terms and conditions of the Buyer's Agreement dated 26.06.2013 executed between the parties. Further, the Authority observes that the respondent obtained the occupation certificate on 16.07.2019 and offered possession to the complainants on 18.07.2019 and the conveyance deed was executed on 05.12.2019.

33. 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 @ 11.10% p.a. w.e.f. 28.11.2016 till the date of offer of possession plus two months or actual handover of possession, whichever is earlier, after obtaining the occupation certificate, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

**G.II. Direct the respondent to return Rs.1,12,575/- unreasonably charged by the respondent by increasing the sale price after execution of the Buyer's Agreement.**

**G.III. Direct the respondent to return entire amount paid as GST Tax by the complainants between 01.07.2017 to 28.12.2018.**

**G.IV Direct the complainants' bank to remove the lien marked over Fixed Deposit of Rs.1,72,643/- in favour of the respondent on the pretext of future payment of HVAT for the period of (01.04.2014 to 30.06.2017). and also order to direct respondent to assist the process of removing lien by providing NOC for the same.**

34. The financial liabilities between the allottee and the promoter comes to an end after the execution of the conveyance deed. The complainants could have asked for the claim before the the conveyance deed got executed between the parties. Therefore, after execution of the conveyance deed the complainants-allottees cannot seek refund of charges other than statutory benefits if any pending. Once the conveyance deed is executed and accounts

have been settled, no claims remain. So, no directions in this regard can be effectuated at this stage.

**H. Directions of the authority: -**

35. 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 sec 34(f) of the Act: -

- i. The respondent/promoter shall pay interest at the prescribed rate i.e., 11.10% for every month of delay on the amount paid by the complainants from the due date of possession i.e., 28.11.2016 till the date of offer of possession plus 2 months or actual handover of possession whichever is earlier after adjustment/deduction of the amount already paid if any towards delay in handing over of possession as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- ii. 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 Act,

36. Complaint stands disposed of.

37. File be consigned to the registry

Dated: 25.09.2024



**(Ashok Sangwan)**

Member

Haryana Real Estate  
Regulatory Authority,  
Gurugram