

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

**Complaint no. : 6633 of 2022**  
**Date of order : 25.09.2024**

Shweta Adlakha  
**R/o:** Premier Terraces at Palm Drive,  
Unit no. PTT-08-0601, Floor-6<sup>th</sup>, Block-8,  
Sector-66, Gurugram. .

**Complainant**

**Versus**

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

**Respondent**

**CORAM:**  
Shri. Ashok Sangwan

**Member**

**APPEARANCE:**  
Gaurav Rawat (Advocate)  
Harshit Batra (Advocate)

**Complainants  
Respondent**

**HARERA**  
**ORDER**  
**GURUGRAM**

1. The present complaint has been filed by the complainant/allottee 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	"Premier Terraces at the Palm Drive", Sector-66, Gurugram, Haryana
2.	Nature of project	Group housing colony
3.	DTCP licence	DS-2007/24799 of 2007 Dated- 27.09.2007
4.	Unit no.	PTT-08-0601, 6 <sup>th</sup> floor, Tower-08 (As on page 36 of complaint)
5.	Unit area	2100 sq.ft. (As on page 36 of complaint)
6.	Provisional allotment letter in favor of original allottee(s)	07.05.2010 (As on page 34 of reply)
7.	Buyer's Agreement between original allottee(s) and respondent	16.07.2010 (As on page 35 of complaint)
8.	Possession clause	<p><b>14. POSSESSION</b></p> <p><b>(a) Time of handing over the Possession</b></p> <p><i>Subject to terms of this clause and the Allottee(s) 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 upon complying with all provisions, formalities, documentation etc., as prescribed by the Developer, the Developer shall make all</i></p>

		<p>efforts to handover possession of the Unit (which falls within ground plus four floors tower/building) <b>within a period of thirty(30) months from the date of commencement of construction, and for the Unit (which falls within ground plus thirteen floors tower/building) within a period of thirty six(36) months from the date of commencement of construction, subject to certain limitations as may be provided in this Agreement and timely compliance of the provisions of this Agreement by the Allottee(s). the Allottee(s) agrees and understands that the Developer shall be entitled to a grace period of three(3) months, for applying and obtaining the occupation certificate in respect of the Unit and/or the Project.</b></p> <p>(Emphasis supplied)                  (As on page 48 of complaint)</p>
9.	Due date of possession	24.09.2014 (calculated 36 months from date of start of construction i.e., 24.06.2011)
10.	Nomination letter	22.04.2019 (As on page 80 of complaint)
11.	Sale deed between original allottee and complainant	24.03.2019 (As on page 73 of complaint)
12.	Total consideration	Rs.1,24,39,800/- (As per schedule of payment on page 64 of complaint)
13.	Total amount paid by the complainant	Rs.1,21,11,704/- (As on page 78 at Annexure-C3 of complaint)
14.	Occupation certificate	08.08.2019 (As on page no. 91 of reply)
15.	Offer of possession	13.08.2019

		(As on page 81 of complaint)
16.	Unit handover letter	12.09.2019 (As on page 85 of complaint)
17.	Conveyance deed btw complainant and respondent	08.01.2020 (As on page 89 of complaint)
18.	Indemnity cum undertaking	08.04.2019 (As on page 86 of reply)

**B. Facts of the complaint**

3. The complainant has made the following submission: -

- I. That the present complaint is with reference to the Group Housing Colony project "Premier Terraces At Palm Drive" at Sector - 66, Gurugram launched by the respondent i.e., M/s Emaar MGF Land Ltd. on the 27299 acres of land.
- II. That in 2007, the respondent issued an advertisement announcing the project and thereby invited applications from prospective buyers for the purchase of unit in the said project. The complainant while searching for a flat/accommodation was lured by such advertisements and calls from the brokers of the respondent and relying on various representations and assurances given by the respondent and on belief of such assurances, original allottee namely Ashu Tandon and Aditi Tandon, booked a unit by paying an amount of Rs.10,00,000/- on 17.04.2010, towards the booking of the unit bearing no. Unit PTT-08-0601 on 6<sup>th</sup> Floor in Tower/Block-8 having super area measuring 2100 sq. ft. and the same was acknowledged by the respondent.
- III. That the respondent confirmed the booking of the unit to the original allottees' and allotted the unit for a total sale consideration of Rs.1,24,39,800/- along with car parking and other specifications.

- IV. That the Buyer's Agreement was executed between the original allottees and respondent on 16.07.2010. As per clause 14(a) of the buyer's agreement, the respondent had to deliver the possession of the unit by 24.06.2014 (i.e., 36 months from the commencement of construction dated 24.06.2011) with a grace period of 90 days for applying and obtaining the Occupation Certificate.
- V. The original allottees subsequently transferred / endorsed the property in favour of the Mr. Ashish Chopra and Mrs. Anika Chopra vide Agreement to Sell dated 21.11.2012 for an appropriate consideration. Thereafter, subsequent allottees transferred / endorsed the property in favour of the complainant vide Agreement to Sell dated 24.03.2019. The balance amount for obtaining the property which was still under construction and was paid by the complainant according to the demands raised by the respondent.
- VI. As per the demands raised by the respondent, based on the payment plan, the complainant paid a total sum of Rs.1,21,46,792/- against the total sale consideration of Rs.1,24,39,800/-.
- VII. That after many requests and emails, the complainant received the offer of possession on 13.08.2019. It is pertinent to note here that along with the above said letter of offer of possession respondent raised several illegal demands on account of the following which are actually not payable as per the Builder Buyer Agreement. That offering possession by the respondent on payment of charges which the flat buyer is not contractually bound to pay, cannot be considered to be a valid offer of possession.
- VIII. That the respondent raised demand for 12 months of advance maintenance charges from the complainant which is absolutely illegal. That the respondent asking for electric meter charges of and

electrification charges from the complainants is absolutely illegal as the cost of the electric meter in the market is not more than Rs.2,500.00 hence asking for such a huge amount, when the same is not a part of the Builder Buyer Agreement is unjustified and illegal and therefore needs to be withdrawn immediately.

- IX. That the complainant had time and again requested the respondent to show/inspect the unit before paying any further amount and requested to provide the number for car parking space but respondent failed to reply.
- X. That the respondent asked the complainants to sign the indemnity bond as prerequisite condition for handing over of the possession to which the complainant has raised an objection. But the respondent instead of paying the delay possession charges clearly refused to handover possession if the complainants do not sign the aforesaid indemnity bond. Further, the complainant left with no option instead of signing the same.
- XI. That not only the BBA is one sided heavily loaded in favour of the respondent also the Settlement-cum-Amendment Agreement is heavily loaded in favour of the respondent. That after many follow ups and reminders the conveyance deed was executed in favour of the complainant on 08.01.2020. While this sale deed acknowledges that the complainant has paid the total consideration of Rs.1,21,46,792/-, towards full and final consideration of the said apartment and applicable taxes etc, it makes no provision for compensating the complainants for the huge delay in handing over the flat and project.
- XII. That the respondent is guilty of deficiency in service within the purview of the Act, 2016 and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017.

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

4. The complainants have sought following relief(s):
- Direct the respondent to pay the interest on the total amount paid at the prescribed rate of interest from the due date of possession till date of actual physical possession.
  - Set aside the one-sided indemnity bond that got signed by the respondent from the complainant under undue influence.
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: -
- That the original allottees (Mr. Ashu Tandon and Ms. Aditi Tandon) approached the respondent and expressed interest in booking of an apartment in the residential group housing colony known as "Premier Terraces at Palm Drive" situated in Sector 66, Urban Estate Gurgaon, Haryana. Prior to the booking, the original allottees conducted extensive and independent enquiries with regard to the project, only after being fully satisfied on all aspects, that they took an independent and informed decision to book the unit in question.
  - That thereafter the original allottees, vide an application form dated 16.04.2010 applied to the respondent for provisional allotment of the unit. Pursuant thereto, unit bearing no PTT-08-0601, located on the Sixth Floor, Tower-08 admeasuring 2100 sq. ft. (tentative area) was allotted vide provisional allotment letter dated 07.05.2010..
  - Thereafter, a Buyer's Agreement dated 16.07.2010 was executed between the original allottees and the respondent. As per clause 14(a) of the Agreement, the due date of possession was subject to the allottees

having complied with all the terms and conditions of the Agreement. That being a contractual relationship, reciprocal promises are bound to be maintained. That it is respectfully submitted that the rights and obligations of allottee as well as the builder are completely and entirely determined by the covenants incorporated in the Agreement which continue to be binding upon the parties thereto with full force and effect. It is pertinent to mention that it was categorically provided in clause 14(b)(vi) that in case of any default/delay by the allottees in payment as per the schedule of payment incorporated in the Agreement, the date of handing over of possession shall be extended accordingly, solely on the respondent's discretion till the payment of all outstanding amounts to the satisfaction of the respondent.

- IV. That thereafter, the unit was transferred to the subsequent allottees (Mr. Ashish Chopra and Ms. Anika Chopra) by the original allottees upon the execution of the affidavits and indemnity cum undertakings by both the transferor and the transferee. The transfer was thereafter accepted by the respondent vide nomination letter dated 29.11.2012.
- V. That thereafter, the subsequent allottees approached the respondent in lieu of transferring the rights, title, interest of the said property to the complainant. That pursuant thereto, an Agreement to Sell dated 24.03.2019 was executed between the subsequent allottees and the complainant for transferring rights, title, interest of the said unit. Thus, unit was transferred to the complainant by the subsequent allottees upon the execution of the affidavit dated 05.04.2019 and indemnity cum undertaking dated 05.04.2019 by both the transferor and the transferee. The transfer was thereafter accepted by the respondent vide nomination letter dated 22.04.2019.



- VI. That further, an endorsement dated 22.04.2019 was also made in the name of the complainant attached with the Buyer's Agreement. That it is a matter of fact and record that when the complainant bought the unit, the unit was ready and was purchased by the complainant without any delay or demur.
- VII. That at the time of nomination of the complainant, the project was already delayed due to reasons beyond the control of the company. That having knowledge of the existing delay, due to circumstances beyond the control of the respondent, the complainant willingly and voluntarily entered into the agreement for sell and the transfer documents thereof leading to their nomination. Hence, the complaint is liable to be dismissed with costs against the complainants.
- VIII. That at this stage, it is categorical to note that the time taken by the respondent to develop the project is the usual time taken to develop a project of such a large scale and despite all the *force majeure* circumstances, the respondent completed the construction of the project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the complainants and demanding the prices only as and when the construction was being done.
- IX. That a period of 166 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of Orders by the statutory authorities. Thus, the respondent has been prevented by circumstances beyond its power and control from undertaking the implementation of the project during the time period indicated above and therefore the same is not to be taken into reckoning while computing the period of 48 as has been provided in the Agreement.

- X. It is further submitted that despite there being a number of defaulters in the project, the respondent had to infuse funds into the project and have diligently developed the project in question. That the respondent applied for Occupation Certificate in respect of the said unit on 11.01.2018 and the same was thereafter issued on 08.08.2019.
- XI. That thereafter, the complainant was offered possession of the unit in question through letter of offer of possession dated 13.08.2019 and was 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 complainant.
- XII. That the respondent earnestly requested the complainant to obtain possession of the unit in question and further requested to execute a conveyance deed in respect of the unit in question after completing all the formalities regarding delivery of possession. However, the complainant did not pay any heed to the legitimate, just and fair requests of the respondent and threatened the respondent with institution of unwarranted litigation.
- XIII. That thereafter, an indemnity cum undertaking for possession dated 29.08.2019 of the said unit was executed between the complainant and the respondent for use and occupation of the said unit whereby the complainant has declared and acknowledged that they have no ownership right, title or interest in any other part of the project except in the unit area of the unit in question. That after the execution of the conveyance deed, no right of seeking delay poss
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. I 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.1 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 complainant on 08.01.2020 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 allottee has invested her 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.*

*35. The flat purchasers invested their 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 seeing 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."*

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 complainant never gave up his 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 complainant/allottee 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 principles 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 13.08.2019 when the offer of possession was made by the respondent. The complainants have filed the present complaint on 10.10.2022 which is 3 years 1 month and 27days 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 project being delayed due to force majeure circumstances.**

22. The respondent-promoter has raised a contention that the handover of the unit was delayed due to force majeure conditions such as various orders passed by the National Green Tribunal, Environment Pollution (Prevention & Control) Authority, shortage of labour and stoppage of work due to the order of various authorities. Since there were circumstances beyond the control of respondent, so taking into consideration the above-mentioned facts, the respondent be allowed the period during which his construction activities came to stand still, and the said period be excluded. The Authority is of the view that though there have been various orders issued to curb the environment pollution, but these were for a short period of time. So, the circumstances/conditions after that period can't be taken into consideration for delay in completion of the project.

**G. Findings regarding relief sought by the complainant**

- G. I Direct the respondent to pay the interest on the total amount paid at the prescribed rate of interest from the due date of possession till date of actual physical possession.**

23. In the present complaint, the complainant intends to continue with the project and is 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)*

24. Clause 14(a) of the apartment buyer's agreement (in short, the agreement) dated 16.07.2010, 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 Developer shall make all efforts to handover possession of the unit(which falls within ground plus four floors tower/building) **within a period of thirty(30) months from the date of commencement of construction**, and for the Unit(which falls within ground plus thirteen floors tower/building) **within a period of thirty six(36) months from the date of commencement of construction**, subject to certain limitations as may be provided in this Agreement and timely compliance of the provisions of this Agreement by the Allottee(s). the Allottee(s) agrees and understands that the Developer shall be entitled to a grace period of three (3) months, for applying and obtaining the occupation certificate in respect of the Unit and/or the project.*

25. The buyer's agreement was executed on 16.07.2010 between the original allottees and the respondent. 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 09.04.2019 at page no. 78 of complaint is 24.06.2011. Thus, the Authority have calculated 36 months from the date of start of construction, also the grace period of 3



months is allowed to the respondent/promoter. Therefore, the due date comes out to be 24.09.2014.

26. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is 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 subsection (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.*

27. 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.
28. 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%**.
29. The definition of term 'interest' as defined under section 2(z a) 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;”*

30. 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 16.07.2010 between the original allottee Mr. Ashu Tandon and the co-Allottee i.e., Mrs. Aditi Tandon and the respondent. The possession of the subject unit was to be offered within a period of 36 months plus 3 months from date of commencement of construction. The Authority calculated due date of possession from the date of start of construction i.e., 24.06.2011 along with a grace period of 3 months which comes out to be 24.09.2014. The respondent has failed to handover possession of the subject unit on the due date.

31. That thereafter the unit was transferred to the complainant by the original allottees. The transfer was accepted by the respondent vide nomination letter dated 22.04.2019. The occupation certificate in respect of the said project was received by the respondent/promoter on 08.08.2019 and the thereafter, the unit was offered to the complainant on 13.08.2019. The conveyance deed was executed in favour of the complainant on 08.01.2020. No doubts, 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, but the complainant was already in knowledge of the delay caused and she accordingly chose to buy the subject unit. Here the complainant entered into the project with an expectation that delivery of possession is delayed beyond the timeline and the project is running late. Here in the present complaint, the endorsement has been made in favour of the complainant on 22.04.2019 and the occupation certificate was received by the respondent on 08.08.2019. The complainant has only suffered the delay from the time they entered into the project i.e., from the date of endorsement i.e., 22.04.2019.

32. 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. 22.04.2019 till the date of offer of possession plus two months or 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. Set aside the indemnity bond that got signed by the complainant under the undue influence of the respondent.**


33. The complainant could have asked for the said relief before the execution of the conveyance deed between the parties. Therefore, after after the execution of the conveyance deed cannot seek any other relief other than the statutory benefits, if any pending. So no directions in this regard can be effectuated at this stage.

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

34. 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 complainant from the date 22.04.2019 till the date of offer of possession plus 2 months or 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.
  - iii. The rate of interest chargeable from the allottee/complainant by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoters 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.
  - iv. The respondent shall not charge anything from the complainant which is not the part of the agreement.
35. Complaint stands disposed of.
36. File be consigned to the registry.

Dated: 25.09.2024

  
**(Ashrok Sangwan)**  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram