

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

Complaint no. :	7428 of 2022
Date of filing complaint:	09.12.2022
Date of decision:	09.07.2024

1. Mr. Arun Kumar Jain 2. Mrs. Neelam Jain R/o- Flat No. 1102, Tower 24, Gurgaon Greens, Sector 102, Gurugram, Haryana, Pin 122505	Complainants
Versus	
Emaar MGF Land Limited Office: Ece House, 28 Kasturba Gandhi Marg, New Delhi -110001	Respondent

CORAM:	
Shri Arun Kumar	Chairman
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Jagdeep Kumar (Advocate)	Complainants
Sh. Dhruv Rohatgi (Advocate)	Respondent

ORDER

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

A. Unit and project related details

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

Sr. No.	Particulars	Details
1.	Name of the project	Palm Gardens, Sector 83, Gurugram, Haryana
2.	Total area of the project	21.90 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	108 of 2010 dated 18.12.2010
	Validity of license	17.12.2023
	Licensee	Logical Developers Pvt. Ltd. and 2 others
	Area for which license was granted	21.9 acres
5.	HRERA registered/ not registered	Registered vide no.330 of 2017 dated 24.10.2017 (1,2,6,8 to 12 and other facilities and amenities)
	HRERA registration valid up to	31.12.2018
	HRERA extension of registration vide	02 of 2019 dated 02.08.2019
	Extension valid up to	31.12.2019
6.	Allotment Letter	18.01.2012
		[Page 22 of complaint]
7.	Unit no.	0801, 8 th floor, Building No. 01 [page 29 of complaint]
8.	Area of the unit	1720 sq. ft
		[page 29 of complaint]
9.	Date of execution of buyer's agreement	10.02.2012 [page 27 of complaint]

10.	Possession clause	<p>10. POSSESSION</p> <p>(a) Time of handing over the Possession</p> <p><i>Subject to terms of this clause and subject to Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 36 (Thirty six) months from the date start of construction, subject to timely compliance of the provisions of the Buyer's Agreement by the Allottee. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of 3 (three) months, for applying and obtaining the completion certificate/ occupation certificate in respect of the Unit and/or the Project.</i></p> <p>(Emphasis supplied) [page 36 of complaint]</p>
11.	Start of construction	09.08.2012 (As per statement of account on 13.12.2022 at page 136 of reply)
12.	Due date of possession	09.11.2015
13.	Sale consideration	Rs.98,18,614 /- (As per statement of account on 13.12.2022 at page 136 of reply)
14.	Total amount paid	Rs. 98,18,616/- (As per statement of account on 13.12.2022 at page 136 of reply)
15.	Occupation certificate granted on	17.10.2019 [page 95-96 of reply]
16.	Offer of possession	24.10.2019

		[page 67 of complaint]
17.	Delay compensation already paid by the respondent in terms of the buyer's agreement as per statement of account dated 13.12.2022 at page 136 of reply	Rs.6,13,156/-
18.	Unit handover letter dated	16.12.2019 [Page 109 of reply]
19.	Conveyance deed executed on	24.12.2019 [Page 110-115 of reply]

B. Facts of the complaints:

3. The complainants have made the following submissions in the complaint:
- i. That the respondent had advertised itself as a very ethical business group that lives onto its commitments in delivering its housing projects as per promised quality standards and agreed timelines. They also assured the consumers like complainants that they have secured all the necessary sanctions and approvals from the appropriate authorities for the construction and completion of the real estate project sold by them to the consumers in general. Respondent further also assured that the allotment letter and builder buyer agreement for the said project would be issued to the complainant within one week of booking to the complainant.
 - ii. That in January, 2012 the respondent approached the complainant with an offer to invest and buy a flat in the project "Palm Gardens" in the sector-83, Gurugram. That on 06.01.2012 complainant had a meeting with respondent where the respondent explained the project details of "Palm Gardens" and highlight the amenities of the project such as joggers park, joggers track, 2 swimming pool, etc. and told that only tower 01,04,05, and 11 is available for advance booking, on relying on these details

- complainant enquire the availability of flat on 8th in Tower 1 which was a unit consisting area 1720 sq. ft. The complainant while relying upon those assurances given by the respondent and believing them to be true, complainant booked a residential unit bearing no. 0801 on 8th floor in tower-1 in the proposed project of the respondent measuring approximately super area of 1720 Sq. ft. in the township to be developed by respondent. Accordingly, the complainant has paid Rs.7,50,000/- through cheque bearing no. 806919 dated 06.01.2012 as booking amount.
- iii. That in the said application form, the price of the said flat was agreed at the rate of Rs.4485/- per sq. ft. mentioned in the said application form. 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.
- iv. That on 10.02.2012 the respondent executed buyer's agreement which consisted very stringent and biased contractual terms which are illegal, arbitrary, unilateral and discriminatory in nature, because every clause of agreement is drafted in a one-sided way and a single breach of unilateral terms of provisional allotment letter by complainant, will cost him forfeiting of 15% of total consideration value of unit. Respondent exorbitantly increased the net consideration value of unit by adding EDC, IDC and PLC and when complainant opposed the unfair trade practices of respondent they inform that EDC, IDC and PLC are just the government levies and they are as per the standard rules of government and these are just approximate values which may come less at the end of project and same can be proportionately adjusted on prorata basis and about the delay payment charges of 24% they said this is standard rule of company

and company will also compensate at the rate of Rs.7.5 per sq. ft. per month in case of delay in possession of flat by company. Complainant opposed these illegal, arbitrary, unilateral and discriminatory terms of provisional allotment letter but as there is no other option left with complainant because if complainant stop the further payment of installments then in that case respondent forfeit 15% of total consideration value from the total amount paid by complainant.

- v. That as per the clause-10(a) of the said buyer's agreement dated 10.02.2012, 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 three (3) months grace period thereon from the date of start of construction i.e., 09.08.2012. The relevant portion of clause-10(a) of the buyer's agreement is reproduced herein for the kind perusal of the Authority. *"The company proposes to hand over the possession of the unit within 36 months from the date of start of construction., subject to timely compliance of the provision of the agreement by the Allottee. The Allottee agrees and understands that the company shall be entitled to a grace period of 3 month, for applying and obtaining the completion certificate/ occupation certificate in respect of the Unit and/or the Project."*
- vi. However, the respondent has breached the terms of said flat buyer agreement and failed to fulfill its obligations and has not delivered possession of said flat within the agreed time frame of the builder buyer agreement. The proposed possession date as per Buyer's Agreement was due on 09.08.2015.
- vii. That from the date of booking 06.01.2012 and till 24.10.2019, the respondent had raised various demands for the payment of installments on complainant towards the sale consideration of said flat and the

complainant have duly paid and satisfied all those demands as per the flat buyers agreement without any default or delay on their part and have also fulfilled otherwise also their part of obligations as agreed in the flat buyers agreement. The Complainant were and have always been ready and willing to fulfill their part of agreement, if any pending.

- viii. That as per schedule of payment of buyer's agreement the total sale consideration exclusive of ST and GST taxes is Rs. for said unit was Rs.94,04,148/- (which includes the charges towards Basic Price - Rs.76,99,150/-, exclusive/dedicated covered car parking Rs.3,00,000/-, EDC & IDC Rs.6,66,998/-, Club Membership Rs.50,000/-, IFMS Rs.86,000/- and PLC for central park Rs.6,02,000/- but later at the time of possession respondent add Rs. 1,40,060/- in sale consideration without any reason which is illegal, arbitrary, unilateral and unfair trade practice. Complainant opposed the increase in sales consideration at time of possession but respondent did not pay any attention to complainant.
- ix. That the complainant has paid the entire sale consideration along with applicable taxes to the respondent for the said flat. As per the statement dated 27.12.2019, issued by the respondent, upon the request of the complainant, the complainant have already paid Rs.1,01,45,318/- towards total sale consideration and applicable taxes as on today to the respondent as demanded time to time and now nothing is pending to be paid on the part of complainant. Although the respondent charges Rs.1,40,060/ extra from complainant.
- x. That on the date agreed for the delivery of possession of said unit as per date of booking and later on according to the buyers agreement is 09.08.2015, the complainant had approached the respondent and its officers for inquiring the status of delivery of possession but none had

bothered to provide any satisfactory answer to the complainant about the completion and delivery said flat. The complainant thereafter kept running from pillar to post asking for the delivery of his home but could not succeed in getting any reliable answer.

- xi. That the conduct on part of respondent regarding delay in delivery of possession of the said flat has clearly manifested that respondent never ever had any intention to deliver the said flat on time as agreed. It has also cleared the air on the fact that all the promises made by the respondent at the time of sale of involved flat were fake and false. The respondent had made all those false, fake, wrongful and fraudulent promises just to induce the complainant to buy the said flat on basis of its false and frivolous promises, which the respondent never intended to fulfill. The respondent in its advertisements had represented falsely regarding the delivery date of possession and resorted to all kind of unfair trade practices while transacting with the complainant.
- xii. That the offer of possession offered by respondent through "intimation of possession" was not a valid offer of possession because respondent offered the possession on dated 24.10.2019 with stringent condition to pay certain amounts which are never be a part of agreement. As on 24.10.2019 project was delayed approx four years & two months. At the time of offer of possession builder did not adjust the penalty for delay possession as per RERA Act 2016. In case of delay payment, builder charged the penalty @24% per annum and in case of delay in possession builder promised to give Rs.7.5/- sq. ft. only, which is illegal, arbitrary, unilateral and discriminatory. Respondent also demanded an Indemnity-cum-undertaking along with final payment, which is illegal and unilateral demand. Respondent did not even allow complainants to visit the property at "Palm Gardens" before clearing the final demand raised by

respondent along with the offer of possession. Respondent demanded two year advance maintenance charges from complainants which was never agreed under the buyer's agreement and respondent also demanded a lien marked FD of Rs.1,59,462/- 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. Complainant informed the respondent about his unfair calculation of delay possession penalty and also enquires the construction status of rest of project through telephonically but nothing changed and respondent does not want answer any enquiry before getting complete payment against his final demand. Respondent left no other option to complainant, but to pay the payment one year maintenance charges Rs. 67,080/- and submit a fixed deposit of Rs.1,59,462/- with a lien marked in favour of Emaar MGF Land Limited and Rs.5,16,120/- towards e-Stamp duty and Rs.45,000/- towards registration charges of above said unit no. 801, tower 1, "Palm Gardens" in addition to final demand raised by respondent along with the offer of possession.

- xiii. Respondent did not provide the final measurement of above said unit No. 801, tower 1, "Palm Gardens". Respondent charge all IDC, EDC and PLC and maintenance as per area of unit as 1720 sq. ft. but there is no architect confirmation provided by respondent about the final unit area which respondent was going to handover to complainant.
- xiv. 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 complainant on 09.08.2015, therefore, the tax which has come into existence after the due date of possession (09.08.2016) of flat, this extra cost should not be levied on complainant, since the same would not have fallen on the complainant if respondent had offer the possession of flat within the time stipulated in the builder buyer agreement.

- xv. On 16.12.2019 complainant informed respondent telephonically that respondent is creating anomaly by not compensating the complainant for delay possession charges at the rate of interest specified in RERA Act 2016. Complainant makes it clear that, if respondent not compensates the complainant for delay possession interest then complainant will approach the appropriate forum to get redressal. Whenever complainant enquire about the delay possession charges, respondent making excuse of getting approval from directors, but till date respondent did not credited the delay possession interest.
- xvi. That the respondent has committed grave deficiency in services by delaying the delivery of possession and false promises made at the time of sale of the said flat which amounts to unfair trade practice which is unfair as well as illegal. The respondent has also criminally misappropriated the money paid by the complainant as sale consideration of said flat by not delivering the unit on agreed timelines. The respondent has also acted fraudulently and arbitrarily by inducing the complainant to buy the said flat basis its false and frivolous promises and representations about the delivery timelines aforesaid housing project.
- xvii. That after taking possession of flat on 16.12.2019, complainant return to Singapore and didn't able to visit India again due to worldwide pandemic situation COVID -19, now after the lifting of travel ban by appropriate authorities complainant's planned visit to India to oversee said unit and to pursue the delay possession charges with respondent, but respondent did not paying any heed to the request of complainant to pay the lawful delay possession charges as per RERA Act 2016, due to above reason complainant had perforce filed this complaint against the respondent before this Authority.

- xviii. That the respondent has acted in a very deficient, unfair, wrongful, fraudulent manner by not delivering the said flat situated at the project "Palm Gardens" Sector-83, Gurugram within the timelines agreed in the buyer's agreement and otherwise. That as on, 24.01.2019, it has been a total delay of four years & two months.
- xix. That the cause of action accrued in favour of the complainant and against the respondent on 06.01.2012 when the complainant had booked the said flat and it further arose when respondent failed /neglected to deliver the said flat on proposed delivery date. The cause of action is continuing and is still subsisting on day-to-day basis.

C. Relief sought by the complainants:

4. The complainants have sought the following relief(s):
- I. Direct the respondent to pay interest at the rate of 18% on account of the delay in offering possession on Rs.1,24,85,356/- paid by the complainant as sale consideration of the said flat from the date of payment till the date of delivery of possession.
 - II. Direct the respondent to return Rs.1,12,593/- amount unreasonably charged in the name of "other charges" and other heads after execution of buyer's agreement between Respondent and Complainants.
 - III. Direct the complainant's bank to remove the lien marked over fixed deposit of Rs.2,92,457/- in favour of respondent on the pretext of future payment of HVAT for the period of (01.04.2014 to 30.06.2017) and also order to direct respondent to assist the process of removing lien from complainant's bank by providing NOC for the same.
 - IV. Direct the respondent to return entire amount paid as GST Tax by complainant between 01.07.2017 to 12.04.2018.

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

C. Reply by respondent:

5. The respondent by way of written reply made following submissions:

- i. That the complainants have got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 10.02.2012.
- ii. That the complainants are estopped by their own acts, conduct, acquiescence, laches, omissions, etc. from filing the present complaint. That the respondent has already offered possession of the unit in question to the complainants, who have taken possession of the said unit and moreover, the conveyance deed has also been executed. That the transaction between both the parties stood satisfied, as such, the respondent has already complied with its obligations under the buyer's agreement. The reliefs sought in the false and frivolous complaint are barred by estoppel. It is relevant to submit that the conveyance deed of the unit in question had already been executed in favour of the complainants on 24.12.2019, whereas the present complaint has been filed on 25.11.2022, i.e. after almost 3 years. 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. The complainants chose never to raise any claim towards delay possession charges and were agreeable to the compensation so awarded by the

respondent in terms of the buyer's agreement. The respondent has credited a sum of Rs.74,347/- as benefit as EDC interest and Rs.1,88,848/- on account of early payment rebate (EPR). That the respondent even credited an amount to the tune of Rs.6,13,156/- as compensation for the delay in offering the possession of the unit. Hence, it is clear from the lack of any documentary proof, whereby the complainant may have raised any such additional claim or if they may have been dissatisfied with the awarded compensation. Thus, it is abundantly clear that the execution of conveyance deed was without any undue influence and coercion. The present complaint is an afterthought with malafide intent to enrich themselves.

- iii. That the complainants are not "allottees" but investors who have booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale.
- iv. That the instant complaint is barred by limitation. The complainants have alleged that the respondent was obligated to offer possession of the unit in question by August, 2015 and by way of the instant complaint, has sought interest for indemnifying them for the alleged delay in delivery of the unit in question. That cause of action, if any, for seeking interest accrued in favor of the complainants in 2015 and consequently the instant complaint is barred by limitation.
- v. That the complainants have not come before this Authority with clean hands and have suppressed vital and material facts from this Authority.
- vi. 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 and booked the unit in question, bearing number PGN-01-0801, 8th floor, tower-01 admeasuring 1720 sq. ft.

situated in the project developed by the respondent, known as "Palm Gardens" at sector-83, village - Kherki Daula, Gurugram, Haryana. That thereafter the complainants vide application form dated 06.01.2012 applied to the respondent for provisional allotment of a unit bearing number PGN-01-0801 in the project. That the complainants prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and only after that complainants took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondent. The complainants consciously and wilfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that the complainants shall remit every installment on time as per the payment schedule. The respondent had no reason to suspect bonafide of the complainants. That the respondent issued the provisional allotment letter dated 18.01.2012 to the complainants.

- vii. That the respondent sent the buyer's agreement to the complainants, which was executed between the parties on 10.02.2012 That the buyer's agreement was consciously and voluntarily executed by the complainants after reading and understanding the contents thereof to its full satisfaction. That the rights and obligations of the complainants as well as the respondent are completely and entirely determined by the covenants incorporated in the buyer's agreement which continue to be binding upon the parties thereto with full force and effect. Clause 10(a) of the buyer's agreement provides that subject to the allottee having complied with all the terms and conditions of the buyer's agreement, and not being in default of the same, possession of the apartment would be handed over within 36 months from the date of start of construction. It has further been specified in the same clause that the respondent will be entitled to a grace

period of 3 months. Clause 10(b) provides that the time period for delivery of possession shall stand extended on the occurrence of delay for reasons beyond the control of the respondent. In terms of clause 10(b)(iv) in the event of default in payment of amounts demanded by the respondent as per the schedule of payment under the buyer's agreement, the time for delivery of possession shall also stand extended.

- viii. That in clause 12(d) of the buyer's agreement it has been specified that in case of delay caused due to non-receipt of occupation certificate, completion certificate or any other permission/sanction from the competent authorities, no compensation or any other compensation shall be payable to the allottees. That the respondent completed construction and had submitted an application on 07.02.2019 for grant of occupation certificate before the concerned statutory authority. The occupation certificate has been granted by the concerned department vide memo dated 17.10.2019. It is respectfully submitted that once an application for grant of occupation certificate is submitted to the concerned statutory authority the respondent ceases to have any control over the same. Therefore, it is respectfully submitted that the time period utilized by the concerned statutory authority for granting the occupation certificate is liable to be excluded from the time period utilized for implementation of the project.
- ix. That in the meanwhile, the project was registered under the provisions of the Act. Registered vide registration no. 330 of 2017 dated 24.10.2017. Furthermore, the registration has been extended by the Authority vide certificate dated 02.08.2019 and was valid till 31.12.2019. Without admitting or acknowledging in any manner the truth or legality of the allegations leveled by the complainants and without prejudice to the

contentions of the respondent, it is respectfully submitted that the complaint preferred by the complainants is devoid of any cause of action.

- x. That the respondent on receipt of the occupation certificate, offered possession of the said unit to the complainants vide the letter of offer of possession dated 24.10.2019. The complainants have failed to comply with its obligations to take the possession of the unit in question. The instant complaint is a gross misuse of process of law. Therefore, no cause of action has accrued in favor of the complainants in the facts and circumstances of the case.
- xi. That the complainants did not have adequate funds to remit the balance payments requisite for obtaining possession in terms of the buyer's agreement and consequently in order to needlessly linger on the matter, the complainants refrained from obtaining possession of the unit in question. The complainants needlessly avoided the completion of the transaction with the intent of evading the consequences enumerated in the buyer's agreement. Therefore, there is no equity in favour of the complainants. Without admitting or acknowledging in any manner the truth or correctness of the frivolous allegations levelled by the complainants and without prejudice to the 7 contentions of the respondent, that the alleged interest frivolously and falsely sought by the complainants was to be construed for the alleged delay in delivery of possession. That an offer for possession marks termination of the period of delay, if any. The complainants are not entitled to contend that the alleged period of delay continued even after receipt of offer for possession. The complainants have consciously and maliciously refrained from obtaining possession of the unit in question. Consequently, the complainants are liable for the consequences including holding charges, as enumerated in the buyer's agreement, for not obtaining possession.

- xii. That the complainants approached the respondent in order to take the possession of the said unit in question and had duly taken the possession of the same. The conveyance deed in respect of the unit in question has also been executed. That after execution of the unit handover letter, obtaining of possession of the unit in question and after the execution of the conveyance deed, the complainants are left with no right, entitlement or claim against the respondent. The transaction between the complainants and the respondent stands concluded and no right or liability can be asserted by the respondent or the complainants against the other.
- xiii. That the respondent has credited a sum of Rs.74,347/- as benefit as EDC interest and Rs.1,88,848/- on account of early payment rebate (EPR). That the respondent even credited an amount to the tune of Rs.6,13,156/- as compensation for the delay in offering the possession of the unit. Without prejudice to the rights of the respondent, delayed interest if any has to be calculated only on the amounts deposited by the complainants towards the basic principal amount of the unit in question and not on any amount credited by the respondent, or any payment made by the complainants towards delayed payment charges (DPC) or any taxes/statutory payments etc.
- xiv. That the project has got delayed on account that the contractor hired by the respondent i.e. ILFS (M/s. Infrastructure Leasing & Financial Services), a reputed contractor in real estate, started raising certain false and frivolous issues with the respondent due to which they had slowed down the progress of work at site. The respondent was constrained to issue several letters to ILFS requesting it to proceed and complete the construction work in accordance with the decided schedule. However, ILFS continued with its wanton acts of instigating frivolous and false

disputes for reasons best known to it. That the respondent cannot exercise any influence over the working of ILFS. ILFS has intentionally delayed the progress of construction for which the respondent cannot be held liable either in equity or in accordance with the provisions of the buyer's agreement.

- xv. That the so-called interest wrongly sought by the complainants was to be construed for the alleged delay in delivery of possession. That an offer for possession marks termination of the period of delay, if any. The complainants are not entitled to contend that the alleged period of delay continued even after receipt of offer for possession.
- xvi. That several allottees, have defaulted in timely remittance of payment of instalments which was an essential, crucial and an indispensable requirement for conceptualization and development of the project in question. Furthermore, when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially whereas enormous business losses befall upon the respondent. The respondent, despite default of several allottees, has diligently and earnestly pursued the development of the project in question and has constructed the project in question as expeditiously as possible. That the construction of the tower in which the unit in question is situated is complete and the respondent has already offered possession of the unit in question to the complainants. Therefore, there is no default or lapse on the part of the respondent and there is no equity in favour of the complainants.
- xvii. That the respondent has duly fulfilled its obligations under the buyer's agreement, by completing construction of the unit/tower, obtaining the

occupation certificate in respect thereof from the competent authority and by offering possession of the same to the complainants and even by compensating the complainants as per the terms and conditions of the buyer's agreement.

- xviii. That all the demands that have been raised by the respondent are strictly in accordance with the terms and conditions of the buyer's agreement duly executed and agreed to between the parties. Moreover, once application for grant of occupation certificate is submitted by the respondent in the office of concerned statutory authority, the respondent ceases to have any control over the same. The respondent cannot regulate the functioning of the concerned statutory authority.
- xix. That, without admitting or acknowledging the truth or legality of the allegations advanced by the complainants and without prejudice to the contentions of the respondent, it is respectfully submitted that the provisions of the Act are not retrospective in nature. 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 clauses of the buyer's agreement. The interest is compensatory in nature and cannot be granted in derogation and ignorance of the clauses of the buyer's agreement. That the construction of the project was affected on account of unforeseen circumstances beyond the control of the respondent developer. The Hon'ble Supreme Court directed framing of modern mineral concession rules. Reference in this regard may be had to the judgment of "Deepak Kumar v. State of Haryana, (2012) 4 SCC 629". The competent authorities took substantial time in framing the rules and in the process the availability of building materials including sand which was an important raw material for development of the said project became scarce. Further, the respondent was faced with certain other force majeure events

including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of 12 the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. That the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide order dated 02.11.2015 mining activities by the newly allotted mining contracts by the State of Haryana was stayed on the Yamuna Riverbed. These orders infact interalia continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High Court and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was almost 2 years that the scarcity as detailed aforesaid continued, despite which all efforts were made and materials were procured at 3-4 times the rate and the construction continued without shifting any extra burden to the customer. The time taken by the respondent to develop the project is the usual time taken to develop a project of such a large scale. Further, the parties have agreed that in the event of delay, the allottee shall be entitled to compensation on the amounts paid by the allottee, which shall be adjusted at the time of handing over of possession/execution of conveyance deed subject to the allottee not being in default under any of the terms of the buyer's agreement.

- xx. Therefore, if this Authority has to determine delay on the basis of the estimated time period provided in the said buyer's agreement, it has to do so on the strict interpretation of the said clause. The said clause

categorically reads that the time period mentioned for handing over of possession is also dependent on the complainants making timely payment of all installments.

- xxi. That as per the schedule of payment, the basic sale price of the unit is Rs.79,12,000/-. The EDC & IDC is Rs. 6,66,999/-. The car park charges is Rs.3,00,000/-. The club membership charges are Rs.50,000/-. The IFMS is Rs.86,000/- and the tax applicable charges are Rs.2,64,246.48/-. In addition, in terms of the choice of the complainants, PLC for central greens has been charged at Rs.6,02,000/-. Thus, it is abundantly clear that the respondent has charged in terms of the buyer's agreement and no arbitrary charges are levied. In terms of Clause 9(a) of the buyer's agreement, the allottee had categorically agreed to bear electricity, water and sewerage charges. Thus, the levy of such charges at the time of offer of possession is not arbitrary and is an agreed term of the contract. Clause 5 of the buyer's agreement categorically states that the allottee shall be obligated to bear the cost of stamp duty, registration charges and other incidental charges and expenses for registration of the conveyance deed. The administration charges are the incidental charges pertaining to lawyer fee and other expenses incurred for execution of conveyance deed as defined in the offer of possession.
- xxii. That the respondent has duly fulfilled its obligations under the buyer's agreement, by completing construction of the unit/tower, obtaining the occupation certificate in respect thereof from the competent authority and by offering possession of the same to the complainants and even by compensating the complainants as per the terms and conditions of the buyer's agreement. There is no default or lapse in so far as the respondent is concerned.

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

D. Jurisdiction of the authority:

7. 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

8. 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

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

Section 11(4)(a)

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

Section 34-Functions of the Authority:

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

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Finding on objections raised by the respondent: -

F.1 Whether the complainant can claim delayed possession charges after execution of conveyance deed.

11. The respondent submitted that the complainants had executed the conveyance deed on 24.12.2019 and therefore, the transaction between the complainant and the respondent has been concluded and no right or liability can be asserted by respondent or the complainants against the other. Therefore, the complainants are estopped from claiming any interest in the facts and circumstances of the case.
12. The allottees have invested their hard-earned money and there is no doubt that the promoter has been enjoying benefits of and the next step is to get their title perfected by executing a conveyance deed which is the statutory right of the allottee. Also, the obligation of the developer - promoter does not end with the execution of a conveyance deed. Therefore, in furtherance to the Hon'ble Apex Court judgement and the law laid down in case titled as *Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd. (now Known as*

BEGUR OMR Homes Pvt. Ltd.) and Ors. (Civil appeal no. 6239 of 2019)

dated 24.08.2020, the relevant paras are reproduced herein below:

"34 The developer has not disputed these communications. Though these are four communications issued by the developer, the appellants submitted that they are not isolated aberrations but fit into a pattern. The developer does not state that it was willing to offer the flat purchasers possession of their flats and the right to execute conveyance of the flats while reserving their claim for compensation for delay. On the contrary, the tenor of the communications indicates that while executing the Deeds of Conveyance, the flat buyers were informed that no form of protest or reservation would be acceptable. The flat buyers were essentially presented with an unfair choice of either retaining their right to pursue their claims (in which event they would not get possession or title in the meantime) or to forsake the claims in order to perfect their title to the flats for which they had paid valuable consideration. In this backdrop, the simple question which we need to address is whether a flat buyer who seeks to espouse a claim against the developer for delayed possession can as a consequence of doing so be compelled to defer the right to obtain a conveyance to perfect their title. It would, in our view, be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, the purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance to forsake the right to claim compensation. This basically is a position which the NCDRC has espoused. We cannot countenance that view.

35. The flat purchasers invested hard earned money. It is only reasonable to presume that the next logical step is for the purchaser to perfect the title to the premises which have been allotted under the terms of the ABA. But the submission of the developer is that the purchaser forsakes the remedy before the consumer forum by seeking a Deed of Conveyance. To accept such a construction would lead to an absurd consequence of requiring the purchaser either to abandon a just claim as a condition for obtaining the conveyance or to indefinitely delay the execution of the Deed of Conveyance pending protracted consumer litigation."

13. The authority has already taken a view in in **Cr no. 4031/2019 and others tiled as Varun Gupta V/s Emaar MGF Land Limited and others** and observed that the execution of a conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the subject unit and upon taking possession, and/or executing conveyance deed, the complainant never gave up his statutory

right to seek delayed possession charges as per the provisions of the said Act.

14. After consideration of all the facts and circumstances, the authority holds that even after execution of the conveyance deed, the complainant allottee cannot be precluded from his right to seek delay possession charges from the respondent-promoter.

F.II Whether the complaints are investors and not an allottees?

15. The respondent took a stand that the complainant is investor and not consumers and therefore, he is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the allotment letter, it is revealed that the complainant is buyer, and he has paid a total consideration of the unit in question to the promoter towards purchase of a unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

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

16. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant is allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred to in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of the promoter that the allottee being investor are not entitled to protection of this Act also stands rejected.

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

17. So far as the issue of limitation is concerned, the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is a universally accepted maxim, and the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority is of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.
18. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in MA NO. 21 of 2022 of Suo Moto Writ Petition Civil No. 3 of 2020 have held that the period from 15.03.2020 to 28.02.2022 shall stand

excluded for purpose of limitation as maybe prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

19. In the present matter the possession of the unit was to be offered on or before 09.11.2015 after completion of the project but the same was offered only on 24.10.2019 after receipt of occupation certificate on 17.10.2019 and ultimately leading to execution of conveyance deed of the same on 24.12.2019. So, limitation if any, for the cause of action arose on 24.10.2019 when the offer of possession was made by the respondent to the complainant. The complainant has filed the present complaint on 09.12.2022 which is 3 years 1 month and 15 days from the date of cause of action. In the present matter the three-year period of delay in filing of the case also after taking into account the exclusion period from 15.03.2020 to 28.02.2022 would fall on 10.02.2024. In view of the above, the Authority is of the view that the present complaint has been filed within a reasonable period of time and is not barred by the limitation.

G. Findings on the relief sought by the complainant:

G.1 Direct the respondent to pay interest at the rate of 18% on account of the delay in offering possession on Rs.1,24,85,356/- paid by the complainant as sale consideration of the said flat from the date of payment till the date of delivery of possession.

20. 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."

21. Clause 10 of the buyer's agreement 10.02.2012 provides for handing over of possession and is reproduced below:

"10. POSSESSION

(a) Time of handing over the Possession

Subject to terms of this clause and subject to Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 36 (Thirty six) months from the date of start of construction, subject to timely compliance of the provisions of the Buyer's Agreement by the Allottee. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of 3 (three) months, for applying and obtaining the completion certificate/ occupation certificate in respect of the Unit and/or the Project."

22. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentations 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 allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment time period 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 floor 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 possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the unit within a period of 36 months from the start of construction. The date of start of construction is 09.08.2012. Further, it was provided in the buyer's agreement that company shall be entitled to a grace period of five months, for applying and obtaining the completion certificate/ occupation certificate in respect of the unit and/or the project. The construction commenced on 09.08.2012 as per statement of account dated 13.12.2022. The period of 36 months expired on 09.08.2015. Further, the complainant-builder has submitted that a grace period of 3 months may be allowed to it for applying and obtaining the completion certificate/occupation certificate in respect of the unit and/or the project in terms of order dated 08.05.2023 passed by the Hon'ble Appellate Tribunal in **Appeal No.433 of 2022 titled as Emaar MGF Land Limited Vs. Babia Tiwari and Yogesh Tiwari** wherein it has been held that if the allottees wish to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining occupation certificate. The relevant portion of the order dated 08.05.2023, is reproduced as under:

"As per aforesaid clause of the agreement, possession of the unit was to be delivered within 24 months from the date of execution of the agreement i.e., by 07.03.2014. As per the above said clause 11(a) of the agreement, a grace period of 3 months for obtaining Occupation Certificate etc. has been provided. The perusal of the Occupation Certificate dated 11.11.2020

which was ultimately granted on 11.11.2020. It is also well known that it takes time to apply and obtain Occupation Certificate from the concerned authority. As per section 18 of the Act, if the project of the promoter is delayed and if the allottee wishes to withdraw then he has the option to withdraw from the project and seek refund of the amount or if the allottee does not intend to withdraw from the project and wishes to continue with the project, the allottee is to be paid interest by the promoter for each month of delay. In our opinion if the allottee wishes to continue with the project, he accepts the terms of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. So, in view of the above said circumstances, the appellant-promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the Occupation Certificate. Thus, with inclusion of grace period of 3 months as per provisions of section 11 (a) of the agreement, the total competition period becomes 27 months. Thus, the due date of delivery of possession comes out to 07.06.2014.

24. Therefore, in view of the above judgement and considering the provisions of the Act, the authority is of the view that, the promoter is entitled to avail grace period so provided in the agreement for applying and obtaining the occupation certificate. Therefore, the due date of handing over of possession comes out to be 09.11.2015 including grace period of 3 months.

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

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

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

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates

which the State Bank of India may fix from time to time for lending to the general public.

26. 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.
27. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 09.07.2024 is @ 8.95 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.95%.
28. **Rate of interest to be paid by the complainants in case of delay in making payments** - 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;"*
29. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.95% by the respondent/promoters

which is the same as is being granted to them in case of delayed possession charges.

30. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the Authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per agreement. By virtue of clause 10 (a) of the buyer's agreement executed between the parties on 10.02.2012, the possession of the subject unit to handover within 36 (Thirty-Six) months from the date of start of construction i.e., 09.08.2012. along with grace period of 3 months, for applying and obtaining the completion certificate/ occupation certificate in respect of the unit and/ or the project. Therefore, the due date of handing over of possession come out to be 09.11.2015 including grace period of three months. The occupation certificate was granted by concerned authority on 17.10.2019 and thereafter the possession of the subject unit was offered to the complainants on 24.10.2019. Therefore, the authority allows DPC as per the buyer's agreement from due date of possession i.e., 09.11.2015 till the date of possession i.e., 16.12.2019 plus two months or the date of handing over whichever is earlier as per proviso to section 18(1) of the Act read with rule 15 of the rules after adjusting the amount if any, paid towards the delay in handing over the possession of the unit to the complainants. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject unit and it is failure on part of respondent to fulfil its obligations and responsibilities as per the buyer's agreement dated 10.02.2012 to handover the possession within the stipulated period.
31. An amount of Rs.6,13,156/- already paid by the respondent as delayed compensation to the complainant as per statement of account dated

13.12.2022 may be adjusted as the same is already paid towards delay in handing over of the possession of the unit to the complainant.

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 @ 10.95% p.a. w.e.f. from the due date of possession i.e., 09.11.2015, till the date of offer of possession plus two months i.e., 24.10.2019 as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

G.II Direct the respondent to return Rs.1,12,593/- amount unreasonably charged in the name of "other charges" and other heads after execution of buyer's agreement between respondent and complainants.

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

G.IV Direct the complainant's bank to remove the lien marked over fixed deposit of Rs.2,92,457/- in favour of respondent on the pretext of future payment of HVAT for the period of (01.04.2014 to 30.06.2017) and also order to direct respondent to assist the process of removing lien from complainant's bank by providing NOC for the same.

33. The above-mentioned reliefs G.II, G.III and G.IV as sought by the complainant is being taken together as the findings in one relief will definitely affect the result of the other reliefs and these reliefs are interconnected.

34. That 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 conveyance deed got executed between the parties. Therefore, after execution of the conveyance deed the complainant-allottee 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 remains. So, no directions in this regard can be effectuated at this stage.

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

35. The complainant is also seeking relief w.r.t. litigation expenses & 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 & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

H. Directions of the Authority:


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

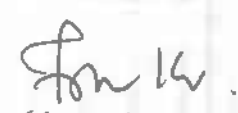
I. The respondent/promoter is directed to pay delayed possession charges at the prescribed rate of interest i.e., 10.95 % per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 09.11.2015 till the date of offer of possession, i.e., 24.10.2019 plus two months or the date of handing over whichever is earlier as per proviso to section 18(1) of the Act read with rule 15 of the rules after adjusting the amount if any, paid towards the delay in handing over the possession of the unit to the complainants.

- ii. The amount of compensation of Rs.6,13,156/- already paid to the complainant as per statement of account dated 13.12.2022 by the respondent as delay compensation in terms of the buyer's agreement shall be adjusted towards delay possession charges payable by the promoter at the at the prescribed rate of interest to be paid by the respondent as per the proviso to Section 18(1) of the Act.

37. Complaint stands disposed of.
38. File be consigned to the registry.

(Demitted Office)
(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated:09.07.2024