

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

Complaint no.	:	7602 of 2022
Complaint filed on	:	20.12.2022
Date of decision	:	09.07.2024

1. Mr. Sujit Kumar Roy 2. Mrs. Sanchita Roy R/o: - EEA-C-F05-03, Emerald Estate Apartments, Maidawas Road , Sector 65, Gurugram, Haryana- 122018	Complainants
Versus	
M/s Emaar MGF Land Ltd. Registered Office: 306-308, 3 rd Floor, Square one C- 2, District Centre, Saket, New Delhi -110017	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

1. The present complaint dated 20.12.2022 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 provisions 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 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	Emerald Estate, Sector 65, Gurugram, Haryana
	Project Area	25.499 acres
2.	DTCP license no.	06 of 2008 dated 17.01.2008 valid up to 16.01.2021
3.	RERA Registered or not	Registered, vide registration no. 104 of 2017 dated 24.08.2017 Valid till 23.08.2022
4.	Allotment letter	11.08.2009 (page 22 of the complaint)
5.	Unit no.	EEA-C-F05-03, 5 th floor, block-C area of the unit:- 1020 sq. ft. [as per buyer's agreement at page 31 of complaint]
6.	Date of execution of buyer's agreement	20.01.2010 [Page 29 of the complaint]
7.	Possession clause	11. POSSESSION (a) Time of handing over the possession <i>Subject to terms of this clause and subject to the 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</i>

		<p><i>provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 36 months from the date of commencement of construction and development of the Unit. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of six months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project</i></p> <p>(emphasis supplied)</p> <p>[page 44 of complaint]</p>
8.	Date of start of construction as per statement of account dated 02.12.2022	26.08.2010 [page 84 of complaint]
9.	Due date of possession	26.02.2014 [as per buyer's agreement dated 20.01.2010, grace period of 6(six) month included]
10.	Total consideration as per statement of account dated 02.12.2022	Rs.44,86,684/- [Page 84 of complaint]
11.	Total amount paid by the complainants as per statement of account dated 02.12.2022	Rs.44,86,687/- [Page 84 of complaint]
12.	Occupation certificate	08.01.2018 [page 134-136 of reply]
13.	Offer of possession	23.04.2018 [page 137-145 of reply]
14.	Indemnity cum undertaking	01.06.2018 [Page 146-147 of reply]
15.	Delay compensation already paid by the respondent in terms of the buyer's agreement	Rs.1,89,762/- [as per statement of account dated 11.01.2023 at page 131 of reply]
16.	Unit hand over letter	19.07.2018

		[page 148 of reply]
17.	Conveyance deed	24.09.2018 [page 149-190 of reply]

B. Facts of the complaint:**3. The complainant has 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 complainant 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. 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 August 2009, the respondent approached the complainant with an offer to invest and buy a flat in the proposed project "Emerald Estate Apartments" in the Sector-65, Gurugram. On 10.08.2009 respondent explained the project details of "Emerald Estate" to the complainant and highlight the amenities of the project like jogging track, members-only clubhouse, state of the art security, centralized pipe cooking gas system, wide internal roads and convenience shopping for everyone, and many more and told that tower B, C, and D is only available for advance booking, on relaying on these details Complainants enquire the availability of flat on 2nd floor in tower D which was a unit consisting area

990 sq ft (later respondent increase the unit area to 1020 sq. ft. before signing of buyers agreement). The complainants while relying upon assurances given by the respondent and believing them to be true, complainants booked a residential flat of 990 sq ft with one car parking space bearing no. 0503, tower D, EEA-C-F05-03, in the proposed project of the respondent in the township to be developed by respondent. Accordingly, the complainants have paid Rs. 5,00,000/- through cheque dated 10.08.2009 as booking amount.

- iii. That in the application form, the price of the said flat was agreed at the rate of Rs.3199/- per sq. ft. and 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 11.08.2009 the respondent issued a provisional allotment letter, which consisting very stringent and biased contractual terms which are illegal, arbitrary, unilateral and discriminatory in nature, because every clause of agreement is drafting in a one-sided way and a single breach of unilateral terms of provisional allotment letter by Complainants, will cost him forfeiting of 15% of total consideration value of unit. Respondent exceptionally increase the net consideration value of flat my adding EDC, IDC and PLC and when Complainants 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.5 per sq. ft. per month in case of delay in possession of flat by company. Complainants opposed these illegal, arbitrary, unilateral and discriminatory terms of provisional allotment letter but as there was no other option left with complainants because if complainants stop the further payment of installments then in that case respondent forfeit 15% of total consideration value from the total amount paid by complainants. Thereafter on 20.01.2010 buyer's agreement was executed on similar illegal, arbitrary, unilateral and discriminatory terms narrated by respondent in provisional allotment letter.

- v. That as per the clause 11(a) of the said flat buyer's agreement dated 20.01.2010, 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 six (6) months grace period thereon from the date of start of construction. 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 15.06.2016.
- vi. That the respondent had raised various demands for the payment of installments from 10.08.2009 till 23.04.2018, on complainant towards

the sale consideration of said flat and the complainant have duly paid and satisfied all those demands as per the flat buyer's 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 complainants were and have always been ready and willing to fulfill their part of agreement, if any pending.

vii. That as per schedule of payments of buyer's agreement the sales consideration for said flat was Rs.41,43,880/- (which includes the charges towards basic price Rs.32,62,980/-, govt charges (EDC & IDC) - 2,75,400/-, club membership Rs.75,000/-, park facing charges Rs 2,04,000/-, PLC for corner Rs.76500 and car park Rs.2,50,000/-) exclusive of service tax and GST, but later at the time of Possession respondent add Rs.83,200/- in sale consideration and increase Sale consideration to Rs.42,27,080/- without any reason for the same and respondent also charge IFMS Rs.51,000/- separately, whereas IFMS charges were not included in sale consideration. Respondent increased the sale consideration without any reason. Complainants opposed the increase in sales consideration at time of possession, but respondent did not pay any heed to issue raised by complainants.

viii. That as per the statement issued by the respondent, complainant have already paid Rs.45,11,754/- towards total sale consideration along with applicable taxes to the respondent for the said flat. Although the respondent charges Rs. 83,200/- extra from complainant.

- ix. That on the due date of delivery of possession of said unit as per buyer's agreement is 26.08.2013, 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.
- x. 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 23rd April 2018 with stringent condition to pay certain amounts which were never be a part of agreement, above respondent did not provide the possession of one car parking space which is an integral part of said premises. As on 23rd April 2018 project was delayed approx. five years. Complainant opposed the offer of possession offered by the respondent because respondent didn't provide the possession of car parking space because the construction of car parking space was not completed as on date the respondent offered the possession of said unit and 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 delay in possession builder gave Rs. 5/- sq ft only, this 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 complainant to visit the unit

before clearing the final demand raised by respondent along with the offer of possession. Further, respondent demanded one-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.13326/- on the pretext of future liability against HVAT for the period of (01-April-2014 to 30-June-2017) which is also an unfair trade practice. The complainant asked 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 to answer any enquiry before getting complete payment against his final demand. Respondent left no other option to complainant, but to pay one year maintenance charges Rs.45,135/- and submit a fixed deposit of Rs.13,326/- with a lien marked in favor of Emaar MGF Land Limited and Rs. 2,27,640/- towards e-stamp duty of above said unit no. 0503, Tower C, Emerald Estate Apartments in addition to final demand raised by respondent along with the offer of possession. Respondent gave physical handover of aforesaid property on date 19.07.2018.

- xi. That after taking possession of flat on 19.07.2018, complainants also identify that some major structural changes done by respondent in project "Emerald Estate" in comparison to features of project narrated to complainants on 10.08.2009. Most of the amenities nowhere exist in project whereas, it was highlight at the time of booking of flat. Respondent did many structural changes and cut down on the internal

features of project, based on which respondent sold this flat to complainants and gain exception amount of profit on the cost of complainants and other buyers of the unit in project. Construction of club house is also not yet completed by the respondent, whereas the 100% payment for club house was taken by respondent in year 2013 itself. Respondent did not even provide the car parking space which is an integral part of said flat and same shall not have any independent legal entity as per Clause 1.3 (a) of buyer's agreement. Respondent did not even confirm or revised the exact amount of EDC and IDC after considering the structural changes neither they provide the receipts or documentary records showing the exact amount of EDC and IDC paid to government and respondent did not even adjust the surplus amount of EDC and IDC charged from complainants and other buyers.

- xii. That the respondent did not provide the final measurement of above said unit No. C 0503, Tower No. C, "Emerald Estate Apartments". Respondent charged all IDC, EDC and maintenance as per area of unit as 1020 sq ft but there is no architect confirmation provided by respondent about the final unit area which respondent was going to handover to complainant.
- xiii. That after a regress follow-up by complainant and other resident of said project, respondent completed the construction of car parking area in the month of February 2022 and provide the possession of basement parking space on 10th February 2022, this way they provide the valid possession of car parking and complete possession of the said flat.

- 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 26.08.2013, therefore, the tax which has come into existence after the due date of possession i.e., 26.08.2013 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 10.02.2020, complainant inform 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 to respondent that, if respondent does not compensate 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 made excuse of getting approval from directors, but till date respondent did not credit the delay possession interest.
- xvi. That the cause of action accrued in favor of the complainant and against the respondent on 10.08.2009 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 complainant:

4. The complainant has sought following relief(s).

- I. Direct the respondent to pay interest at the rate of 18% on account of delay in offering possession on Rs 45,11,754/- 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. 83200/-, amount unreasonably charged by respondent by increasing sale price after execution of buyer's agreement between respondent and complainants.
 - III. Direct the respondent to return entire amount paid as GST Tax by complainant between 01.07.2017 to 19.05.2018.
 - IV. Direct the respondent to return the club house charges along with interest as the respondent did not complete the amenities as promised under buyers' agreement.
 - V. Direct the complainant's bank to remove the lien marked over Fixed Deposit of Rs.13,326/- in favor 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.
 - VI. Direct the respondent to pay an amount of Rs. 55,000/- to the complainants as cost of the present litigation.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has contested the complaint on the following grounds.
 - i. That the instant complaint is barred by limitation. It is also pertinent to mention that the complainants filed the present complaint after the execution of the conveyance deed as all the terms and conditions as per

the buyer's agreement stands fulfilled in the eyes of law and only to harass the respondent and extort money. The complainants have received the offer of possession on 23.04.2018 and have executed the conveyance deed on 24.09.2018 have filed the present complaint on 20.12.2022, i.e. after a lapse of 4 years 7 months 27 days from the date of offer of possession and 4 years 2 months 26 days from the date of execution of conveyance deed. The complaint is admittedly belated and barred by limitation period of 3 years.

- ii. That the complainant has 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 20.01.2010.
- iii. That the complainants are estopped by their own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. It is submitted that the complainants have already obtained possession of the unit in question vide the letter of offer of possession dated 23.04.2018 and has, further, executed a conveyance deed regarding the unit in question. The transaction between the complainants and the respondent stands satisfied. The reliefs sought in the present complaint is false and frivolous and the same is 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 as early as on 24.12.2019 (sic 24.09.2018), whereas the present complaint has been filed on 25.11.2022 (sic.

20.12.2022), 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.1,814/- as EPR and a sum of Rs. 15,135/-, on account of anti-profiting. It is submitted that the respondent even credited an amount to the tune of Rs. 1,89,762/- 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.

- iv. That the present complaint is not maintainable in law or on facts. The provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the 'Act') are not applicable to the project in question. The application for issuance of occupation certificate in respect of the tower in which the apartment in question is located was made on 29.06.2017, i.e. before the notification of the Haryana Real Estate

Regulation and Development Rules 2017 (hereinafter referred to as the 'Rules') and the Occupation certificate was thereafter issued on 08.01.2018; copy of the same has been appended herewith. It is pertinent to note that once an application for grant of occupation certificate is submitted for approval in the office of the concerned statutory authority, respondent ceases to have any control over the same. The grant of sanction of the occupation certificate is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence. As far as the respondent is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authority for obtaining of the occupation certificate. No fault or lapse can be attributed to the respondent in the facts and circumstances of the case. Therefore, the time period utilised by the statutory authority to grant occupation certificate to the respondent is necessarily required to be excluded from computation of the time period utilised for implementation and development of the project.

- v. That the complainants have not come before this Hon'ble Authority with clean hands and has suppressed vital and material facts from this Hon'ble Authority.
- vi. That the complainants are not "Allottees" but Investors who has booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale. The apartment in question has been booked by the complainants as a speculative investment and not for the

purpose of self-use as their residence. Therefore, no equity lies in favour of the complainants.

- vii. That the complainant had approached the respondent and expressed an interest in booking an apartment in the residential group housing colony developed by the respondent known as "Emerald Estate" situated in Sector 65, Urban Estate Golf Course Extension Road, Maidawas, Tehsil & District Gurgaon. Prior to making the booking, the complainant conducted extensive and independent enquiries with regard to the project and it was only after the complainant was fully satisfied about all aspects of the project, that the complainant took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question.
- viii. That thereafter, the complainants vide an application form dated 10.08.2009 applied to the respondent for provisional allotment of the unit. Pursuant thereto, unit bearing no EEA-C-F05-03, located on the Fifth Floor, tower-C admeasuring 990 sq. ft. (tentative area) was allotted vide provisional allotment letter dated 11.08.2009. The complainants consciously and willfully opted for a construction linked payment plan for remittance of sale consideration for the unit in question.
- ix. Thereafter, a buyer's agreement dated 20.01.2010 was executed between the complainants and the respondent. It is pertinent to mention that the buyer's agreement was consciously and voluntarily executed between the parties.

- x. That the complainant was irregular in payment of instalments. The respondent was constrained to issue reminders and letters to the complainant requesting her to make payment of demanded amounts, payment request letters, reminders etc, are annexed, had been sent to the complainant by the respondent clearly mentioning the amount that was outstanding and the due date for remittance of the respective amounts as per the schedule of payments, requesting the complainant to timely discharge her outstanding financial liability but all in vain. Statement of account correctly maintained by the respondent in due course of its business depicting delay in remittance of various payments by the complainant. But, the complainants consciously and maliciously chose to ignore the payment request letters and reminders issued by the respondent and flouted in making timely payments of the instalments which was essential, crucial and an indispensable requirement under the buyer's agreement.
- xi. 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 continues to be binding upon the parties thereto with full force and effect. Clause 11 of the buyer's agreement provides that subject to the Allottees having complied with all the terms and conditions of the agreement, and not being in default of the same, possession of the unit would be handed over within 36 months from the date of commencement of construction and development of the unit plus grace period of 6 months. It is Submitted that the grace period

of 6 months cannot be excluded and is liable to be included in terms of the Judgment of the Hon'ble Appellate Tribunal in Fantasy Buildwell Pvt. Ltd. Vs Gaurav Manohar Negi, bearing Appeal No.299 of 2022, decided on 09.12.2022. It is further provided in the buyer's agreement that time period for delivery of possession shall stand extended on the occurrence of delay for reasons beyond the control of the respondent. Furthermore, it is categorically expressed in clause 11(b)(iv) that in the event of any default or delay in payment of instalments as per the schedule of payments incorporated in the buyer's agreement, the time for delivery of possession shall also stand extended. It is submitted that the complainants have defaulted in timely remittance of the instalments and hence the date of delivery option is not liable to determine the matter sought to be done by the Complainants.

- xii. That the clause 13 of the buyer's agreement provides that compensation for any delay in delivery of possession shall only be given to such allottees who are not in default of their obligations envisaged under the agreement and who have not defaulted in payment of instalments as per the payment plan incorporated in the agreement. In case of delay caused due to non-receipt of occupation certificate, completion certificate or any other permission/sanction from the competent authorities, no compensation or any other compensation shall be payable to the allottees. That the complainants, having defaulted in payment of instalments, are thus, not entitled to any compensation or any amount towards interest under the buyer's agreement. That the complainants by way of instant complaint

are demanding interest for alleged delay in delivery of possession. The interest is compensatory in nature and cannot be granted in derogation and ignorance of the provisions of the buyer's agreement.

- xiii. That the respondent had applied for occupation certificate on 29.06.2017. Occupation certificate was thereafter issued in favour of the respondent on 08.01.2018. That once an application for grant of occupation certificate is submitted for approval in the office of the concerned statutory authority, the respondent ceases to have any control over the same. The grant of sanction of the occupation certificate is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence. Therefore, the time period utilised by the statutory authority to grant occupation certificate to the respondent is necessarily required to be excluded from computation of the
- xiv. That the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. That merely because the Act applies to ongoing projects which are registered with the authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainant for seeking interest cannot be called in to aid in derogation and ignorance of the provisions of the buyer's agreement. That the interest for the alleged delay demanded by the complainant is beyond the scope of the buyer's agreement. The complainant cannot demand any interest or compensation beyond the terms and conditions incorporated in the buyer's agreement.

- xv. That without prejudice to the contentions of the respondent, it is submitted that the allegations of the complainants that possession was to be delivered by August 2013 are wrong, malafide and result of afterthought in view of the fact that the Complainants had made several payments to respondent even after August 2013. Infact, the last payment was received from the complainants in July 2018, if there was a delay in delivery of project as alleged by the complainants, then the complainants would not have remitted instalments after August, 2013. The allegations put forth by the complainants qua the respondent are absolutely illogical, irrational and irreconcilable in the facts and circumstances of the case. It is reiterated that the alleged due date of proposed handover of possession is misconceived.
- xvi. That the construction of the project/allotted unit in question already stands completed and the respondent has already offered possession of the unit in question to the complainants and the conveyance deed has also been executed. The transaction between the parties is a concluded contract and as such no right to sue survives.
- xvii. That the complainants were offered possession of the unit in question through letter of offer of possession dated 23.04.2018. The complainants were called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit in question to the complainants. However, the complainants approached the respondent with request for payment of compensation for the alleged delay in utter disregard of the

terms and conditions of the buyer's agreement. The respondent explained to the complainants that they are not entitled to any compensation in terms of the buyer's agreement on account of default in timely remittance of instalments as per schedule of payment incorporated in the buyer's agreement. The respondent earnestly requested the complainants to obtain possession of the unit in question and further requested the complainants to execute a conveyance deed in respect of the unit in question after completing all the formalities regarding delivery of possession. However, the complainants did not pay any heed to the legitimate, just and fair requests of the respondent and threatened the respondent with institution of unwarranted litigation.

- xviii. 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 contentions of the respondent, it is submitted that the alleged interest frivolously and falsely sought by the complainants was to be construed for the alleged delay in delivery of possession. It is pertinent to note 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.

- xix. That in addition thereto, it is respectfully submitted that the complainants have executed an indemnity cum undertaking dated 01.06.2018 whereby the complainants have 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. Moreover, the complainants have admitted their obligation to discharge their HVAT liability thereunder. The instant complaint is preferred in complete contravention of their earlier representations and documents executed.
- xx. That subsequently, the complainants approached the respondent requesting it to deliver the possession of the unit in question. A unit handover letter dated 19.07.2018 was executed by the complainants, specifically and expressly agreeing that the liabilities and obligations of the respondent as enumerated in the allotment letter or the buyer's agreement stand satisfied.
- xxi. That the complainants have consciously defaulted in his obligations as enumerated in the buyer's agreement as well as under the Act and it is trite that the complainants cannot be permitted to take advantage of their own wrongs. The instant complaint constitutes a gross misuse of process of law, without admitting or acknowledging in any manner the truth or

correctness of the frivolous allegations levelled by the complainants and without prejudice to the contentions of the respondent.

- xxii. That the delayed payment charges sought by the complainants are beyond the scope of the buyer's agreement as the respondent already credited an amount for compensation in the account of the Complainants as per the buyer's agreement. The complainants cannot demand any further interest or delayed charges beyond the terms and conditions incorporated in the buyer's agreement.
- xxiii. That the respondent has acted strictly in accordance with the terms and conditions of the agreement between the parties. There is no default or lapse on the part of the respondent. The allegations made in the complaint inter-alia that the respondent has failed to comply with the obligations under the agreement. On the contrary, it is the complainants who are in clear breach of the terms of the agreement by not remitting the outstanding amount and by delaying the procedure in taking the possession of the said unit in question within the stipulated time.
- xxiv. 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.

xxv. That complainants availed a loan facility from their banker State Bank of India and accordingly loan documents were executed in respect of the unit in question. Thus, State Bank of India is a necessary and proper party to the complaint. The complainants have failed to implead State Bank of India as a party to the present complaint. The complaint is liable to be dismissed on account of non-joinder of necessary party.

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

E. Jurisdiction of the authority

8. The authority has complete territorial and 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, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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) *The promoter shall-*

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

Section 34-Functions of the Authority:

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

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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Finding on objections raised by the respondent:

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

12. That the respondent submitted that the complainant had executed the conveyance deed on 24.09.2018 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 complainant against the other. Therefore, the complainant is estopped from claiming any interest in the facts and circumstances of the case.

13. 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."

14. 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.
15. 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 complaint is an investor and not an allottee?

16. 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;"

17. 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?

18. 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.

19. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in MA NO. 21 of 2022 of Sua 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.
20. In the present matter the possession of the unit was to be offered on or before 26.02.2014 (including grace period) after completion of the project but the same was offered only on 23.04.2018, after receipt of occupation certificate on 08.01.2018 and ultimately leading to execution of conveyance deed of the same on 24.09.2018. So, limitation if any, for the cause of action arose on 23.04.2018 when the offer of possession was made by the respondent to the complainant. The complainant has filed the present complaint on 20.12.2022 which is 4 years 7 months and 27 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 complainants:

G.I Direct the respondent to pay interest at the rate of 18% on account of delay in offering possession on Rs 45,11,754/- paid by the complainant as sale consideration of the said flat from the date of payment till the date of delivery of possession.

21. In the present complaint, the complainant intends 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."

22. Clause 11 of the buyer's agreement 20.01.2010 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 six months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project."

23. 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.

24. **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 26.08.2010. Further, it was provided in the buyer's agreement that company shall be entitled to a grace period of six months, for applying and obtaining the completion certificate/ occupation certificate in respect of the unit and/or the project. The construction commenced on 26.08.2010 as per statement of account dated 02.12.2022. The period of 36 months expired on 26.08.2013. Further, the complainant-builder has submitted that a grace period of 6 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 wishes 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.

25. 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 26.02.2014 including grace period of 6 months.



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 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.

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., 09.07.2024 is @ 8.95 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.95%.

29. **Rate of interest to be paid by the complainant 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;"*

30. 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.
31. 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 14(a) of the buyer's agreement executed between the parties on 20.01.2010, the possession of the subject unit to handover within thirty-six months from the date of start of construction i.e., 26.08.2010 along with grace period of 6 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 26.02.2014. The occupation certificate was granted by concerned authority on 08.01.2018 and thereafter the possession of the subject unit was offered

to the complainant on 23.04.2018. Therefore, the authority allows DPC as per the buyer's agreement from due date of possession i.e., 26.02.2014 till the date of offer of possession i.e., 23.04.2018 plus two months or date of handing over whichever is earlier. 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 20.01.2010 to handover the possession within the stipulated period.

32. An amount of Rs.1,89,762/- already paid by the respondent as delayed compensation to the complainant as per statement of account dated 11.01.2023 may be adjusted as the same is already paid towards delay in handing over of the possession of the unit to the complainant.
33. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at rate of the prescribed interest @10.95% p.a. w.e.f. from the due date of possession i.e.,23.04.2018 till the date of offer of possession plus two months or handover of possession whichever is earlier as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

G.II Direct the respondent to return Rs.83,200/-, amount unreasonably charged by respondent by increasing sale price 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 19.05.2018.

G.IV Direct the respondent to return the club house charges along with interest as the respondent did not complete the amenities as promised under buyers' agreement.

G.V Direct the complainant's bank to remove the lien marked over Fixed Deposit of Rs.13,326/- 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.

34. 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.
35. That the financial liabilities between the allottee and the promoter comes to an end after the execution of the conveyance deed. The complainant 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 remain. So, no directions in this regard can be effectuated at this stage.

G.VI Direct the respondent to pay Rs. 55,000/- as litigation charges.

36. The complainants are also seeking relief w.r.t litigation expenses. 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. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.

F. Directions of the authority

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

- i. The respondent/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., 26.02.2014 till the date of offer of possession i.e., 23.04.2018 plus two months or the date of handing over of possession 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 complainant.
- ii. The amount of compensation of Rs.1,89,762/- already paid to the complainant as per statement of account dated 11.01.2023 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.

38. File be consigned to registry.

(Demitted Office)
(Sanjeev Kumar Arora)
Member


(Arun Kumar)
Chairman


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.07.2024