

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

Complaint no. : 6322 of 2022
Order reserved on : 06.08.2024
Order pronounced on : 01.10.2024

1. Mrs. Neeru Sharma
2. Mr. Hari Vallabh Sharma
Both RR/o: A-3605, IREO Victory Valley, Sector- 67,
Gurugram.

Complainants

Versus

M/s Emaar MGF land Limited.
Address: 306-308, 3rd Floor, Square One, C-2, District
Centre, Saket New Delhi- 110017.

Respondent

Coram:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

Appearance:

Shri Jagdeep Kumar
Shri Harshit Batra

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint has been filed by the complainant/allottees in Form CRA 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 to the allottees as per the agreement for sale executed inter se them.

A. Project and unit related details

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

S. No.	Particulars	Details
1.	Name of the project	Gurgaon Greens, Sector 102, Gurugram, Haryana
2.	Project area	13.531 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	75 of 2012 dated 31.07.2012
	Valid till	30.07.2020
	Name of licensee	Kamdhenu Projects Pvt. Ltd. and another C/o Emaar MGF Land Ltd.
5.	HRERA registered/not registered	Registered vide no. 36(a) of 2017 dated 05.12.2017 for 95829.92 sq. mtrs.
	HRERA registration valid up to	31.12.2018
	HRERA extension of registration vide	01 of 2019 dated 02.08.2019
	Extension valid up to	31.12.2019
6.	Unit no.	GGN-03-1101, 11 th floor, tower no. 03 [Page no. 40 of complaint]
7.	Unit measuring (super area)	1650 sq. ft.
8.	Provisional allotment letter dated	27.01.2013 [Page no. 22 of complaint]
9.	Date of execution of buyer's agreement	17.04.2013 [Page no. 37 of complaint]
10.	Possession clause	14. POSSESSION (a) Time of handing over the Possession <i>Subject to terms of this clause and barring force majeure conditions, subject to the Allottee having</i>

		<p><i>complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Unit within <u>36 (Thirty Six) months from the date of start of construction</u>, subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the Company shall be entitled to a <u>grace period of 5 (five) months, for applying and obtaining the completion certificate /occupation certificate in respect of the Unit and/or the Project.</u></i></p> <p>(Emphasis supplied) [Page no. 53 of complaint]</p>
11.	Date of start of construction as per statement of account dated 13.09.2022 at page 88 of complaint	28.06.2013
12.	Due date of possession	28.11.2016 [Note: 5 months Grace period is included]
13.	Total consideration as per statement of account dated 13.09.2022 at page 88 of complaint	Rs.1,31,66,490/-
14.	Total amount paid by the complainants as per statement of account dated 13.09.2022 at page 89 of complaint	Rs.1,31,73,923/-
15.	Occupation certificate	16.07.2019 [Page no. 114 of reply]
16.	Offer of possession	18.07.2019 [annexure R6, page 117 of reply]

17.	Unit handover letter dated	12.09.2019 [Page no. 125 of reply]
18.	Conveyance deed executed on	03.10.2019 [Page no. 134 of reply]
19.	Delay compensation already paid by the respondent in terms of the buyer's agreement as per statement of account dated 13.09.2022 at page 89 of complaint	Rs.4,21,496/-

B. Facts of the complaint

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. That the respondent while launching and advertising any new housing project always commits and promises to the targeted consumer that their dream home will be completed and delivered to them within the time agreed initially in the agreement while selling the dwelling unit to them. They also assured to 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 to the consumers in general.
- ii. That the respondent was very well aware of the fact that in today's scenario looking at the status of the construction of housing projects in India, especially in NCR, the key factor to sell any dwelling unit is the delivery of completed house within the agreed and promised timelines and that is the prime factor which a consumer would

consider while purchasing his/her dream home. Respondent, therefore used this tool, which is directly connected to emotions of gullible consumers, in its marketing plan and always represented and warranted to the consumers that their dream home will be delivered within the agreed timelines and consumer will not go through the hardship of paying rent along-with the installments of home loan like in the case of other builders in market.

- iii. That somewhere in the month of September 2012, the respondent through its business development associate approached the complainants with an offer to invest and buy a flat in the proposed project of respondent, which the respondent was going to launch the project namely "Gurgaon Greens" in the Sector-102, Gurugram. On 24.09.2012, complainants had a meeting with respondent at the respondents branch office "EMAAR Business Park, Mg Road, Sikanderpur Chowk, Sector 28, Gurugram 122002" where the respondent explain the project details of "Gurgaon Greens" and highlight the amenities of the project like Joggers Park, Joggers Track, Rose garden, 2 swimming pool, amphitheater and many more and told that tower 03, 07, 20, and 22 is only available for advance booking and each tower will have G+13th floors and on every 13th floor of these towers there will be a penthouse which possessing floor no 13th and 14th floor, on relying on these details complainant enquire the availability of flat on 11th floor in Tower 03 which was a unit consisting area 1650 sq. ft., respondent represented to the complainant that the respondent is a very ethical business house in the field of construction of residential and commercial project and in case the complainants would invest in the project of respondent then they would deliver the possession of proposed flat on the

assured delivery date as per the best quality assured by it. The respondent had further assured to the complainant that the respondent has already processed the file for all the necessary sanctions and approvals from the appropriate and concerned authorities for the development and completion of said project on time with the promised quality and specification. The complainants while relying upon those assurances and believing them to be true, complainants booked a residential flat bearing no. 1101 on 11th floor in Tower-03, in the proposed project of the respondent measuring approximately super area of 1650 sq. ft. (153.29 Sq. meter) in the township to be developed by respondent. Accordingly the complainants have paid Rs.10,00,000/- through cheque bearing no. 00062 dated 24.09.2012 as booking amount.

- iv. That in the said application form, the price of the said flat was agreed at the rate of Rs.6,500/- 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.
- v. That approximately after Four Months on 27.01.2013, the respondent issued a provisional allotment letter 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 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.7.5/- 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 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 complainants. Thereafter on 17.04.2013, builder buyer's agreement was executed on similar illegal, arbitrary, unilateral and discriminatory terms narrated by respondent in provisional allotment letter.

- vi. That on 16.05.2013, Mrs. Neeru Sharma w/o Shri Hari Vallabh Sharma out of natural love and affection requested M/s. Emaar MGF Land Limited through a letter to add the Name of her husband Mr. Hari Vallabh Sharma as co-allottee in the said flat. The addition of name of Mr. Hari Vallabh Sharma S/o Shri Hari Kant Sharma as co-allottee in the said was done by respondent on 16.05.2013 by initiating a process of name substitution. Respondent also does the endorsement in favour of Mrs. Neeru Sharma and Mr. Hari Vallabh Sharma on 16.05.2013.

- vii. That as per the clause – 14 of the said flat buyer’s agreement, the respondent had agreed and promise to complete the construction of the said flat and deliver its possession within a period of 36 months with a Five (5) months grace period thereon from the date of start of construction. However, the respondent has breached the terms 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 28.06.2016.
- viii. That from the date of booking i.e., 24.09.2012 and till 19.07.2019, the respondent had raised various demands for the payment of installments on complainants 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.
- ix. That as per Annexure-III (schedule of payments) of buyer’s agreement the sales consideration for said flat was Rs.1,23,86,750/- (which includes the charges towards basic price – Rs1,07,23,350/-, Govt Charges (EDC & IDC) – Rs.5,70,900/-, Club Membership – Rs.50,000/-, IFMS – Rs.82,500/-, Car Park – Rs.3,00,000/-, PLC for Corner Rs.1,65,000/- and PLC for Central Green Rs.4,95,000/-) exclusive of Service Tax and GST, but later at the time of possession respondent add Rs.30,076/- in sale consideration and increase sale consideration to Rs.1,24,16,826/- without any reason for the same and respondent also charge IFMS Rs.82,500/- separately, whereas IFMS Charges already included in sale consideration and that way respondent charge IFMS twice from residents. Respondent

Increased the sale consideration by Rs.1,12,576/- (Rs.30,076 + Rs.82,500) without any reason, which is an illegal, arbitrary, unilateral and unfair trade practice. They opposed the increase in sales consideration at time of possession but respondent did not pay any attention to complainants.

- x. That the complainants have paid the entire sale consideration along with applicable taxes to the respondent for the said flat. As per the statement dated 13.09.2022, issued by the respondent, upon the request of the complainants, they have already paid Rs.1,31,73,923/- 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 complainants. Although the respondent charges Rs.1,12,576/- extra from complainants. That on the date agreed for the delivery of possession of said unit as per date of booking and later on according to the flat buyers agreement is 28.06.2016, they 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 complainants about the completion and delivery said flat.
- xi. 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 18.07.2019 with stringent condition to pay certain amounts which are never be a part of agreement. As on 18.07.2019 project was delayed approx three years. At the time of offer of possession builder did not adjusted the penalty for delay possession as per the 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, moreover at the time of possession builder did not even give what builder promised in the buyer's agreement. 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 "Gurgaon Greens" 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.4,85,048 /- on the pretext of future liability against HVAT for the period of (01.04.2014 to 30.06.2017) which is also a unfair trade practice. The complainants 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 two year maintenance charges Rs.1,44,540/- and submit a fixed deposit of Rs.4,85,048/- with a lien marked in favour of Emaar MGF Land Limited and Rs.4,67,360/- towards e-Stamp duty and Rs.50,000/- towards registration charges of above said unit no. 1101, Tower 03, Gurgaon Greens in addition to final demand raised by respondent along with the offer of possession. Respondent give physical handover of aforesaid property on date 12.09.2019.

- xii. That after taking possession of flat on 12.09.2019, the complainants also identify that some major structural changes were done by

respondent in project "Gurgaon Greens" in comparison to features of project narrated to complainant on 24.09.2012, area of central park was told 8 acre but in reality it is very small as compare to 8 acre and respondent also build car parking underneath 'Central Park'. Most of the amenities are 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 gained undue amount of profit on the cost of complainants and other buyers of the unit in project. Central Park's layout was shown to complainants at the time of booking as an area of prime attraction for which respondent charge PLC of Rs4,95,000/- in pretext of complainants flat facing central green whereas complainants flat is not facing the "Central Green", being at 11th Floor of Tower 03, complainant's view of Central park is obstructed by Tower 05 which complainants reported to respondent and asked respondent to refund of Rs.4,95,000/- PLC charges because due to the location of Tower No 03, complainants flat is ceases to be the preferentially located, but respondent never pay any heed to complaint of complainants. Area of central park was told 8 acre but in reality it is very small as compare to (Below 2 acre). Respondent did not even confirm or revised the exact amount of EDC, IDC and PLC, after considering the structural changes neither they provide the receipts or documentary records showing the exact amount of EDC, IDC and PLC paid to government and respondent did not even adjust the surplus amount of EDC, IDC and PLC charged from complainants and other buyers. The respondent charge exceptionally high PLC from complainants without even transferring the ownership rights of

amenities to complainant on the common area of project. Respondent compelled almost every flat owner (Total 672) through unilateral buyer's agreement to pay PLC.

- xiii. That the GST Tax which has come into force on 01.07.2017, it is a fresh tax. The possession of the apartment was supposed to be delivered to complainants on 16.06.2016, therefore, the tax which has come into existence after the due date of possession of flat, this extra cost should not be levied on complainants, 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.
- xiv. On 12.09.2019, complainants inform respondent telephonically that respondent is creating anomaly by not compensating the complainants for delay possession charges at the rate of interest specified in the Act 2016. Complainants makes it clear to respondent that, if Respondent not compensates the complainants for delay possession interest then complainants will approach the appropriate forum to get redressal.
- xv. 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 complainants 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 complainants to buy the said flat basis its false and frivolous promises and representations about the delivery timelines aforesaid housing project.



xvi. That the cause of action accrued in favour of the complainants and against the respondent on 24.09.2012 when the complainants 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 complainant has filed the present compliant for seeking following reliefs:
- i. Direct the respondent to pay interest at the rate of 18% on account of delay in offering possession on Rs.1,31,73,923/- paid by the complainants 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 PLC of 'Central Park' Rs4,95,000/- plus taxes collected from complainant as the unit is ceases to be preferentially located.
 - iii. Direct the respondent to return Rs.1,12,576/-, amount unreasonably charged by respondent by increasing sale price after execution of buyer's agreement between respondent and complainants.
 - iv. Direct the respondent to return entire amount paid as GST Tax by complainant between 01.07.2017 to 24.07.2019.
 - v. Direct the complainant's bank to remove the lien marked over Fixed Deposit of Rs.4,85,048/- 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.

- 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 contravention as alleged to have been committed in relation to section 11(4)(a) of the Act and to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has raised certain preliminary objections and has contested the present complaint on the following grounds:
 - 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 17.04.2013 as shall be evident from the submissions made in the following paragraphs of the present reply.
 - ii. That Neeru Sharma was interested in the real estate development of the respondent known under the name and style of "Gurgaon Greens" situated at Sector 102, Gurugram, Haryana tentatively applied for provisional allotment of the unit vide an application form and was consequently allotted unit no. GGN-03-1101 vide provisional allotment letter dated 27.01.2013, in building/tower no. 03, having a super area of 1650 sq. ft. and consequently through the buyer's agreement dated 17.04.2013.
 - iii. That thereafter, the complainants requested the addition of complainant no. 2 as a co-owner of the unit. In this regard, indemnity cum undertaking and affidavit was given by the original applicant on 16.05.2013 and an affidavit was also given by the co-

applicant on 16.05.2013. The application requesting for name addition of complainant no. 2.

- iv. That as per clause 14(a) of the buyer's agreement, the delivery of possession of the unit was proposed to be within 36 months from the date of start of construction (28.06.2013) and a grace period of 5 months, i.e., 28.11.2016. That the delivery of possession of the unit was "subject to terms of this clause and barring force majeure conditions, and subject to the allottee having timely complied with all the terms and conditions of this agreement and not being in default under any provisions of this agreement and compliance with all provisions, formalities, documentation etc..."
- v. That being a contractual relationship, reciprocal promises are bound to be maintained. That it is respectfully submitted that the rights and obligations of complainants as well as respondent are completely and entirely determined by the covenants incorporated in the agreement which continues to be binding upon the parties thereto with full force and effect.
- vi. That the remittance of all amounts due and payable by the complainants under the agreement as per the schedule of payment incorporated in the agreement was of the essence. It has also been provided therein that the date for delivery of possession of the unit would stand extended in the event of the occurrence of the facts/reasons beyond the power and control of the respondent. It was categorically provided in clause 14(b)(v) that in case of any default/delay by the allottees in payment as per the schedule of payment incorporated in the agreement, the date of handing over of possession shall be extended accordingly, solely on the respondent's discretion till the payment of all outstanding amounts to the

- satisfaction of the respondent. Since the complainants have defaulted in timely remittance of payments as per the schedule of payment, the date of delivery of possession is not liable to be determined in the manner sought to be done by the complainants.
- vii. That the complainants have defaulted in timely remittance of the instalments and hence the date of delivery of possession of the unit in question is not liable to be determined in the manner sought by the complainants. The complainants are conscious and aware of the said agreement and have filed the present complaint to harass the respondent and compel the Respondent to surrender to their illegal demands. It is submitted that the filing of the present complaint is nothing but an abuse of the process of law.
- viii. That the complainants are not an "Allottees" but Investors who have booked the apartment in question as a speculative investment to earn rental income/profit from its resale and not for their residence. Therefore, no equity lies in favour of the complainants.
- ix. Despite the default caused by the complainants in fulfilling its obligations, the respondent did not default and instead completed the construction of the project without having regular payment of monies by the complainants. That the respondent has complied with all of its obligations, not only with respect to the buyer's agreement with the complainants but also as per the concerned laws, rules, and regulations thereunder and the local authorities. That despite the innumerable hardships being faced by the respondent, the Respondent completed the construction of the project and applied for the occupation certificate vide an application dated 11.02.2019 before the concerned Authority and successfully attained the occupation certificate dated 16.07.2019. It is to be noted that the

construction of all the booked apartments has been completed, out of which 630 Units have been handed over till date. 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. As far as the respondent is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authority for obtaining the occupation certificate. No-fault or lapse can be attributed to the respondent in the facts and circumstances of the case. Therefore, the period utilized by the statutory authority to grant the occupation certificate to the respondent is necessarily required to be excluded from computation of period utilized for the implementation and development of the project.

- x. That only after obtaining the requisite permissions, the respondent legally offered the possession of the unit to the complainants on 18.07.2019. The complainants miserably failed in taking timely possession of the unit. Thereafter, the complainants executed the indemnity cum undertaking for possession on 13.08.2019 and subsequently, the physical possession of the unit was taken on 12.09.2019. It needs to be categorically noted that the complainants had satisfied themselves about the measurement, location, dimension, and development, etc. of the unit and the complainants had no claim of any nature whatsoever against the company about the size, dimension, area, location and legal status of the unit, as is evident in the unit handover letter.



- xi. That the complainants have sought refund of Rs.1,12,576/- alleging the same to be an unreasonable charge. The contentions of the complainants in this regard are denied in toto. The demands raised by the respondent are valid and are duly justified and have been raised in accordance with the terms and conditions of the agreement.
- xii. That an amount of Rs.1,12,576/- has been charged from the complainants in lieu of other charges and administrative charges, in accordance with the terms of the apartment buyer's agreement. That an amount of Rs.1,12,576/- that has been charged from the complainant in lieu of other charges which includes electrification charges, water connection charges, sewerage connection charges, electric meter charges, storm water connection charges, piped gas connection charges etc., registration charges and administrative charges. With regard to this it is submitted that above said charges have been charged as per clause 1.2(a)(i) of the buyer's agreement.
- xiii. That the charges including electrification charges, water connection charges, sewerage connection charges, electric meter charges, storm water connection charges, piped gas connection charges that has been charged from the complainant under the head of "other charges" are essential requirements for any unit, and without the same unit can't be termed as habitable. Furthermore, above said charges are payable to various departments for obtaining service connections from the concerned departments including security deposit for sanction and release of such connections in the name of the allottee.
- xiv. Without accepting the contents of the complaint in any manner whatsoever, the bonafide conduct of the respondent has to be highlighted as the respondent has raised various credit memos: the



respondent gave compensation of Rs.4,21,496/- to the complainants on 18.07.2019, the subvention benefit of Rs.7,19,735/- on 23.06.2017. Further, an amount of Rs.16,984/- was also credited towards anti profiting on 12.04.2019. Without prejudice to the rights of the respondent, delayed interest if any has to be calculated only on the amounts deposited by the allottees/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 allottees/complainants towards delayed payment charges (DPC) or any taxes/statutory payments, etc.

- xv. Thereafter, the absolute title over the unit was transferred to the complainants through the conveyance deed dated 03.10.2019, bearing vasika number 7518. Since over 3 years, the complainants have been living in peaceful possession of the unit and now, after over three years, they have come to the Authority with the claim of delay possession charges which clearly shows their fraudulent and deceptive motive to wrongfully gaining from the respondent. That the complainants should not be entitled to claim the interest on the delayed possession. Thus, the present complaint is devoid of any cause of action and is nothing but an abuse process of law. It is submitted that a contract is deemed to be concluded after execution of the conveyance deed and hence the present complaint is liable to be dismissed with heavy costs. That after having slept on their rights for a number of years, the complainants cannot be rightly allowed to have the present claims.
- xvi. That the respondent has always acted in the utmost bonafide manner. The project of the respondent has been registered under Act, 2016 and HRERA Rules, 2017. Registration certificate has been

granted by this vide memo no. HRERA-139/2017/2294 dated 05.12.2017 and the same has been extended vide Extension no. 1 of 2019 dated 02.08.2019.

xvii. That the complainants have been living in peaceful possession since almost 4 years now. And after over 3 years, have filed the present case with the sole purpose to harass the respondent. That no cause of action persists as on date and hence, the present complaint is liable to be dismissed.

7. The complainants and respondent have filed the written submissions on 24.09.2024 which are taken on record and has been considered by the authority while adjudicating upon the relief sought by the complainants.

E. Jurisdiction of the authority

8. The preliminary objections raised by the respondent regarding jurisdiction of the authority to entertain the present complaint stands rejected. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with office situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter jurisdiction



10. Section 11(4)(a) of the Act 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 as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the objections raised by the respondent

F.I Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act

12. One of the contentions of the respondent is that the authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties' inter-se in accordance with the buyer's agreement executed between the parties. The respondent further submitted that the provisions of the Act are not retrospective in nature and the provisions of the Act cannot undo or modify the terms of buyer's agreement duly executed prior to coming into effect of the Act.
13. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and



agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **hon'ble Bombay High Court in Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others.** (W.P 2737 of 2017) which provides as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter...."

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

14. Also, in appeal no. 173 of 2019 titled as **Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya** dated 17.12.2019, the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and

unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

15. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the buyer's agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the buyer's agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of the Act and are not unreasonable or exorbitant in nature.

F.II Objection regarding the complaint being barred by limitation.

16. The counsel for the respondent submitted that the complainant has filed the present complaint on 21.09.2022 after execution of conveyance deed on 03.10.2019. Therefore, the present complaint is barred by limitation. But the counsel for the complainant submitted that limitation is not applicable qua these proceedings, and submitted a copy of order passed Hon'ble Real Estate Regulatory Authority, Punjab wherein it has been held that the benefits under the Act are not barred by limitation.
17. Though both the parties through their respective counsel advanced submissions with regard to the maintainability of the complaint on the ground of the limitation but in view of settled proposition of law, the case of complainant cannot be thrown away being barred by limitation. As discussed earlier, the subject unit was allotted on 27.01.2013. Though the possession of the unit was to be offered on or before 28.11.2016 after completion of the project but the same was offered only on 18.07.2019 after receipt of occupation certificate on 16.07.2019 and ultimately leading to execution of conveyance deed of the same on 03.10.2019.



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 Authority Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is universally accepted maxim and the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.
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 may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
20. In the present matter the cause of action arose on 18.07.2019 when the offer of possession was made by the respondent. The complainants have filed the present complaint on 21.09.2022 which is 3 years 02 months and 3 days from the date of cause of action. In the present case 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. In view of the above, the Authority is of the view that the present complaint has been filed within a reasonable time period and is not barred by the limitation.

F.III Objection regarding non entitlement of any relief under the Act to the complainant being investors.

21. It is pleaded on behalf of respondent that complainants are not "allottee" but investors who have booked the apartment in question as a



speculative investment in order to earn rental income/profit from its resale. The authority observes that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that the preamble is an introduction of a statute and states the main aims and objects of enacting a statute but at the same time, the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if 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 buyer's agreement, it is revealed that the complainant is buyer and has paid a considerable amount towards purchase of subject unit. At this stage, it is important to stress upon the definition of the term allottee under the Act, and 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."

22. In view of above-mentioned definition of allottee as well as the terms and conditions of the buyer's agreement executed between the parties, it is crystal clear that the complainants are allottees as the subject unit allotted to them by the respondent/promoter. The concept of investor is not defined or referred in the Act of 2016. As per definition under section 2 of the Act, there will be 'promoter' and 'allottee' and there cannot be a party having a status of 'investor'. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal **No.0006000000010557 titled as M/s Srushti Sangam Developers Pvt Ltd. Vs Sarvapriya Leasing (P) Ltd. and anr.** has also held that the concept of investor is not



defined or referred in the Act. Thus, the contention of promoter that the allottees being an investor are not entitled to protection of this Act also stands rejected.

F.IV Objection regarding exclusion of time taken by the competent authority in processing the application and issuance of occupation certificate.

23. As far as contention of the respondent with respect to the exclusion of time taken by the competent authority in processing the application and issuance of occupation certificate is concerned, the authority observed that the respondent had applied for grant of occupation certificate on 16.07.2019 and thereafter vide memo no. ZP-835-AD(RA)/2018/16816 dated 16.07.2019, the occupation certificate has been granted by the competent authority under the prevailing law. The authority cannot be a silent spectator to the deficiency in the application submitted by the promoter for issuance of occupancy certificate. It is evident from the occupation certificate dated 16.07.2019 that an incomplete application for grant of OC was applied on 11.02.2019 as fire NOC from the competent authority was granted only on 30.05.2019 which is subsequent to the filing of application for occupation certificate. Also, the Chief Engineer-I, HSVP, Panchkula has submitted his requisite report in respect of the said project on 19.06.2019. The District Town Planner, Gurugram and Senior Town Planner, Gurugram has submitted requisite report about this project on 03.06.2019 and 10.06.2019 respectively. As such, the application submitted on 11.02.2019 was incomplete and an incomplete application is no application in the eyes of law.
24. The application for issuance of occupancy certificate shall be moved in the prescribed forms and accompanied by the documents mentioned in sub-code 4.10.1 of the Haryana Building Code, 2017. As per sub-code 4.10.4 of the said Code, after receipt of application for grant of occupation



certificate, the competent authority shall communicate in writing within 60 days, its decision for grant/ refusal of such permission for occupation of the building in Form BR-VII. In the present case, the respondent has completed its application for occupation certificate only on 11.02.2019 and consequently the concerned authority has granted occupation certificate on 16.07.2019. Therefore, in view of the deficiency in the said application dated 11.02.2019 and aforesaid reasons, no delay in granting occupation certificate can be attributed to the concerned statutory authority.

F.V Whether signing of unit hand over letter or indemnity-cum-undertaking at the time of possession extinguishes the right of the allottee to claim delay possession charges.

25. The respondent contended that at the time of taking possession of the subject unit vide unit hand over letter dated 12.09.2019, the complainants had certified themselves to be fully satisfied with regard to the measurements, location, direction, developments et cetera of the unit and also admitted and acknowledge that they does not have any claim of any nature whatsoever against the respondent and that upon acceptance of possession, the liabilities and obligations of the respondent as enumerated in the allotment letter/buyer's agreement, stand fully satisfied. The relevant para of the unit handover letter relied upon reads as under:

"The Allottee, hereby, certifies that he /she has taken over the peaceful and vacant physical possession of the aforesaid Unit after fully satisfying himself /herself with regard to its measurements, location, dimension and development etc. and hereafter the Allottee has no claim of any nature whatsoever against the Company with regard to the size, dimension, area, location and legal status of the aforesaid Home.

Upon acceptance of possession, the liabilities and obligations of the Company as enumerated in the allotment letter/Agreement executed in favour of the Allottee stand satisfied."

26. In the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.**, the authority has comprehensively dealt with this

issue and has held that the unit handover letter and indemnity cum undertaking executed at the time of taking possession, does not preclude the allottees from exercising their right to claim delay possession charges as per the provisions of the Act.

27. In light of the aforesaid order, the complainant is entitled to delay possession charges as per provisions of the Act despite signing of indemnity at the time of possession or unit handover letter.

F.VI Whether the execution of the conveyance deed extinguishes the right of the allottee to claim delay possession charges?

28. The respondent submitted that the complainant had executed the conveyance deed on 03.10.2019 and therefore, the transaction between the complainants and the respondent have been concluded and no right or liability can be asserted by respondent or the complainant against the other. Therefore, the complainants are estopped from claiming any interest in the facts and circumstances of the case.
29. In the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.**, the authority has comprehensively dealt with this issue and has held that taking over the possession and thereafter execution of the conveyance deed can best be termed as respondent having discharged its liabilities as per the buyer's agreement and upon taking possession, and/or executing conveyance deed, the complainant never gave up their statutory right to seek delayed possession charges as per the provisions of the said Act. Also, the same view has been upheld by the Hon'ble Supreme Court 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."

30. Therefore, in furtherance of **Varun Gupta V/s Emaar MGF Land Ltd. (supra)** and the law laid down by the hon'ble Apex Court in the **Wg. Cdr. Arifur Rahman (supra)**, this authority holds that even after execution of the conveyance deed, the complainant cannot be precluded from his right to seek delay possession charges from the respondent-promoter.

G. Findings on the reliefs sought by the complainants

G.1 Direct the respondent to pay interest at the rate of 18% on account of delay in offering possession on Rs.1,31,73,923/- paid by the complainants as sale consideration of the said flat from the date of payment till the date of delivery of possession.



31. 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."

32. Clause 11(a) of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

"14. POSSESSION

(a) Time of handing over the Possession

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

33. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the 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.

34. **Due date of possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 36 months from the date of commencement of construction and it is further provided in agreement that promoter shall be entitled to a grace period of five months for applying and obtaining completion certificate/occupation certificate in respect of said floor. The construction commenced on 28.06.2013 as per statement of account dated 13.09.2022. The period of 36 months expired on 28.06.2016. Further, the respondent/builder has submitted that a grace period of five 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 tilted as Emaar MGF Lamd Limited Vs Babia Tiwari and Yogesh Tiwari* wherein it has been held that if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the 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 placed at page no. 317 of the paper book reveals that the appellant-promoter has applied for grant of Occupation Certificate on 21.07.2020 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 the delay. In our opinion if the allottee wishes to continue with the project, he accepts the term 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 the provisions in clause 11 (a) of the agreement, the total completion period becomes 27 months. Thus, the due date of delivery of possession comes out to 07.06.2014."

35. 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 the 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 28.11.2016 including grace period of five months.
36. **Admissibility of delay possession charges at prescribed rate of interest:** The 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.

37. The legislature in its wisdom in the subordinate legislation under the 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.
38. 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., 01.10.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
39. **Rate of interest to be paid by complainant/allottee for 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;"*
40. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.



41. The counsel for the complainant has filed an application for appointment of LC on the grounds that the attributes of the apartment of the allottee do not confirm to the PLC charged from them. However, the counsel for the respondent stated that the conveyance deed of the apartment of the complainant was executed on 03.10.2019 and the complainants/allottee obtained possession and signed the conveyance deed in full knowledge of the attribute of the said apartment and has been in peaceful possession of the same since then. He states that there is no merit in the application for appointment of LC and the same may be dismissed.
42. In view of the above, vide order dated 21.11.2023, the application for appointment of LC is declined as the conveyance deed for the subject apartment already stands executed and the complainant is in peaceful possession of the apartment since October 2019.
43. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 11(a) of the buyer's agreement executed between the parties on 17.04.2013, the possession of the said unit was to be delivered within a period of 36 months from the date of commencement of construction and it is further provided in agreement that promoter shall be entitled to a grace period of five months for applying and obtaining completion certificate/occupation certificate in respect of said floor. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 28.11.2016. In the present case, the complainant was offered possession by the respondent on 18.07.2019 after obtaining occupation certificate dated 16.07.2019 from



- the competent authority. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement annexed but not executed between the parties.
44. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 16.07.2019. However, the respondent offered the possession of the unit in question to the complainant only on 18.07.2019, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, he should be given 2 months' time from the date of offer of possession. These 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 28.11.2016 till the expiry of 2 months from the date of offer of possession (18.07.2019) which comes out to be 18.09.2019.
45. 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 prescribed rate of the interest @ 11.10% p.a. w.e.f. 28.11.2016 till 18.09.2019 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

- G.II** Direct the respondent to return PLC of 'Central Park' Rs4,95,000/- plus taxes collected from complainant as the unit is ceases to be preferentially located.
- G.III** Direct the respondent to return Rs.1,12,576/-, amount unreasonably charged by respondent by increasing sale price after execution of buyer's agreement between respondent and complainants.
- G.IV** Direct the respondent to return entire amount paid as GST Tax by complainant between 01.07.2017 to 24.07.2019.
- G.V** Direct the complainant's bank to remove the lien marked over Fixed Deposit of Rs.4,85,048/- 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.
46. The above-mentioned relief sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
47. In the above mentioned relief sought by the complainants the financial liabilities between the allottees 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.
48. Moreover, the clause 13 of the conveyance deed dated 03.10.2019 is also relevant and reproduced hereunder for ready reference:
- 13. That the actual, physical, vacant possession of the said Apartment has been handed over to the Vendee and the Vendee hereby confirms taking over possession of the said Apartment/parking space(s) from the Vendors after satisfying himself/herself that the construction as also the various installations like electrification work, sanitary fittings, water and sewerage connection etc. have been made and provided in accordance with the drawings, designs and specifications as agreed and are in good order and condition and that the Vendee is fully satisfied in this regard and has no complaint or claim in respect of the area of the said Apartment, any item of work, material, quality of work, installation, compensation for delay, if any, with respect to the said Apartment, etc., therein.*
49. Therefore, after execution of the conveyance deed the complainant-allottee cannot seek any 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.

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

50. *Hon'ble Supreme Court of India in case titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (2021-2022(1) RCR(C) 357)*, 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, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainants may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

H. Directions of the authority

51. 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):
- The respondent is directed to pay the interest at the prescribed rate i.e. 11.10 % per annum for every month of delay on the amount paid by the complainant from the due date of possession i.e., 28.11.2016 till 18.09.2019 i.e. expiry of 2 months from the date of offer of possession (18.07.2019). The arrears of interest accrued so far shall




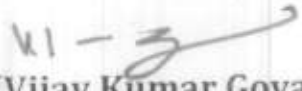
be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.

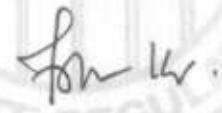
- ii. Also, the amount of compensation already paid by the respondent towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.
- iii. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.

52. Complaint as well as applications, if any, stands disposed off accordingly.

53. File be consigned to registry.


(Ashok Sanhwan)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.10.2024