

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

Complaint no.	7253 of 2022
Date of filing complaint:	21.11.2022
Date of decision:	09.07.2024

1. Mr. Ankush Kuthiala 2. Mrs. Monisha Agrawal Both R/o- Flat no. 302, tower 2, Palm Gardens, Sector 83, Gurugram, Haryana-122004	Complainants
Versus	
Emaar MGF Land Limited Office: Ece House, 28 Kasturba Gandhi Marg, New Delhi -110001	Respondent
CORAM:	
Shri Arun Kumar	Chairman
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Jagdeep Kumar (Advocate)	Complainants
Sh. Dhruv Rohatgi (Advocate)	Respondent

ORDER

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

A. Unit and project related details

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

Sr. No.	Particulars	Details
1.	Name of the project	Palm Gardens, Sector 83, Gurugram, Haryana
2.	Total area of the project	21.90 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	108 of 2010 dated 18.12.2010
	Validity of license	17.12.2023
	Licensee	Logical Developers Pvt. Ltd. and 2 others
	Area for which license was granted	21.9 acres
5.	HRERA registered/ not registered	Registered vide no.330 of 2017 dated 24.10.2017 (1,2,6,8 to 12 and other facilities and amenities)
	HRERA registration valid up to	31.12.2018
	HRERA extension of registration vide	02 of 2019 dated 02.08.2019.
	Extension valid up to	31.12.2019
6.	Unit no.	PGN-02-0302, 3 rd floor, building no. 02. [page 59 of reply]
7.	Area of the unit	1900 sq. ft
8.	Provisional allotment letter issued in favour of Auto Decor i.e. the original allottee on	22.02.2012 [page 50 of reply]
9.	Date of execution of buyer's agreement between the original allottee and the respondent	22.03.2012 [page 57 of reply]
10.	Complainant is a subsequent allottee	The original allottees has entered into agreement to sell with the complainant on 01.03.2014 (Page 69 of complaint)

		and in pursuance of the same, the respondent acknowledged the complainant as allottee vide nomination letter dated 27.03.2014 (page 74 of complaint). and endorsement of Buyer's agreement in favour of complainants by respondent (on pg.68 of complaint)
11.	Possession clause	<p>10. POSSESSION</p> <p><i>(a) Time of handing over the Possession</i></p> <p><i>Subject to terms of this clause and subject to Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 36 (Thirty six) months from the date of start of construction, subject to timely compliance of the provisions of the Buyer's Agreement by the Allottee. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of 3 (three) months, for applying and obtaining the completion certificate/ occupation certificate in respect of the Unit and/or the Project.</i></p> <p>HARERA GURUGRAM (Emphasis supplied) [page 66 of complaint]</p>
12.	Date of start of construction as per statement of account dated 13.06.2023 at page 186 of reply	09.08.2012
13.	Due date of possession	09.11.2015 <i>[36 months from the date of start of construction i.e., 09.08.2012 with a grace period of 3 months]</i>

14.	Total consideration as per statement of account dated 13.06.2023 at page 186 of reply	Rs.1,40,91,148/-
15.	Total amount paid by the complainant as per statement of account dated 13.06.2023 at page 188 of reply	Rs.1,42,02,612/-
16.	Occupation certificate granted on	17.10.2019 [page 140 of reply]
17.	Offer of possession	05.12.2019 [page 146 of reply]
18.	Unit hand over letter dated	11.07.2020 [page 158 of reply]
19.	Conveyance deed dated	21.12.2020 [page 161 of reply]
20.	Delay compensation paid by the respondent in terms of the buyer's agreement as per statement of account dated 13.06.2023	Rs. 3,00,000/- [Page 188 of reply]

B. Facts of the complaints:

3. The complainants have made the following submissions in the complaint:
- i. That the respondent had advertised itself as a very ethical business group that lives onto its commitments in delivering its housing projects as per promised quality standards and agreed timelines. They also assured to the consumers like complainants that they have secured all the necessary sanctions and approvals from the appropriate authorities for the construction and completion of the real estate project sold by them to the consumers in general.
 - ii. That M/s. Auto Decor, registered address E-2368, Palam Vihar, Gurgaon 122017 was the original allottee, who was allotted the flat no. PGN-02-

0302 at "Palm Gardens", Sector 83, Gurugram, Haryana, having super built up area admeasuring 1900 sq. ft. in the project. The said flat was booked by the original allottee on 30.01.2012 by paying an amount of Rs.7,50,000/- through cheque no.082672 dated 30.01.2012 towards total sale consideration of Rs.1,30,56,801/-.

- iii. That the original allottee and respondent entered into a builder buyer's agreement on 22.03.2012 and subsequently the original allottee transfer the said unit in the name of complainants i.e., Mr. Ankush Kuthiala & Mrs. Monisha Agrawal. Respondent confirmed nomination of the complainants for the said unit and receiving a total sum of Rs.91,37,912/- in line with agreement between complainants and original allottee through nomination letter dated 27.03.2014 and endorsed buyer's agreement on 21.03.2014 and handed over the payment receipts, endorsed buyer's agreement along with nomination letter to complainants. Thus, stepping into the shoes of the original allottee. Thereafter, complainants with bona-fide intentions continued to make payments on the basis of the demand raised by the respondent. A total of more than Rs.1,41,94,499/- was paid to the respondent by the complainant.
- iv. Complainants found buyer's agreement 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. When complainants opposed the unfair trade practices of respondent 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.

- v. That as per schedule of payments of buyer's agreement the total sale consideration exclusive of ST and GST taxes is Rs.1,30,56,801/- but later at the time of possession respondent added Rs.2,63,072/- in sale consideration without any reason which is a illegal, arbitrary unilateral and unfair trade practice. Complainants opposed the increase in sales consideration at time of possession, but respondent did not pay any attention to complainants.
- vi. That as per the statement dated 09.11.2022, issued by the respondent the complainants have already paid Rs.1,41,94,499/- towards total sale consideration plus taxes as on today to the respondent and now nothing is pending to be paid on the part of complainants. Although the respondent charged Rs.2,63,072/- extra on sales price without stating any reason for the same.
- vii. That due date of delivery of possession of said unit according to the flat buyer's agreement is 09.08.2015. The complainants thereafter kept running from pillar to post asking for the delivery of his home but could not succeed in getting any reliable answer. That the conduct of respondent has clearly manifested that respondent never ever had any intention to deliver the said unit on time as agreed. The respondent had made all those false, fake, wrongful and fraudulent promises just to induce the complainants to buy the said flat basis its frivolous promises, which the respondent never intended to fulfill.
- viii. That the offer of possession offered by respondent through "intimation of possession" was not a valid offer of possession because complainant was offered the possession on dated 05.12.2019 with stringent condition to pay certain amounts which were never a part of agreement and project is delayed approx four years. At the time of offer of possession builder did not adjust the penalty for delay possession. In case of delay payment,

builder charged the penalty @24% per annum and holding charges @Rs.7.5/- sq. ft. of super area of the said unit per month for entire period of such day. This is illegal, arbitrary, unilateral, discriminatory and above all respondent did not even adjust a single penny on account of delay in possession even after a delay of four years and four months. Respondent did not even allow complainants to visit the property at "Palm Gardens" before clearing the final demand raised by respondent along with the offer of possession. Respondent demanded one year advance maintenance charges from complainants which was never agreed or mentioned under the buyer's agreement and respondent also demanded a lien marked fixed deposit of Rs.2,00,276/- in pretext of future liability against HVAT which are also a unfair trade practice. Complainant informed the respondent about his unfair trade practice about delay possession penalty and also enquires the construction status of rest of project through telephonically but respondent does not want to answer any enquiry before getting complete payment against his final demand. Respondent forced the complainant to pay the payment of one year maintenance charges and fixed deposit of Rs.200276/- with a lien marked in favour of Emaar MGF Land Limited, e-Stamp duty towards above said unit no. 0302, Tower 02, "Palm Gardens" in addition to final demand raised by respondent along with the offer of possession. When respondent offered the possession, various shortcomings were identified by the complainant during the physical inspection of the unit, scheduled by respondent after receiving all payments from complainant. After a persistent follow-up from complainant through e-mails, respondent completed the pending works in said unit and provide the unit handover letter to complainants on 11.07.2020.

- ix. That on 11.07.2020, complainant makes it clear through his phone call that, if respondent does not compensate the complainant at the same rate of interest, then complainant will approach the appropriate forum to get redressal, but till date respondent did not credited the delay possession interest.
- x. That the respondent did not provide the final measurement of above said unit no. 0302, tower no. 02, "Palm Gardens". Respondent has charged all IDC, EDC and PLC and maintenance as per area of unit as 1900 sq. ft. but there is no architect confirmation provided by respondent about the final unit area which respondent will going to handover to complainants. That the respondent has acted in a very deficient, unfair, wrongful, fraudulent manner by not delivering the said unit within the timelines agreed in the flat buyer's agreement and otherwise.
- xi. That the cause of action accrued in favour of the complainants and against the respondent on 21.03.2014 when the said unit was endorsed in name of complainant and it further arose when respondent failed /neglected to deliver the said flat on proposed delivery date. The cause of action is continuing and is still subsisting on day-to-day basis.

C. Relief sought by the complainants:

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

- I. Direct the respondent to pay interest at the rate of 18% on account of the delay in offering possession on Rs.1,41,94,499/- 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.2,63,072/- amount unreasonably charged in the name of "other charges" and other heads after execution of buyer's agreement between respondent and complainants.

- III. Direct the complainant's bank to remove the lien marked over fixed deposit of Rs.2,00,276/- in favour of respondent on the pretext of future payment of HVAT for the period of (01.04.2014 to 30.06.2017) and also order to direct respondent to assist the process of removing lien from complainant's bank by providing NOC for the same.
- IV. Direct the respondent to return entire amount paid as GST Tax by complainant between 01.07.2017 to 12.04.2018.
- V. Direct the respondent to pay an amount of Rs. 55,000/- to the complainants as cost of the present litigation.

C. Reply by respondent:

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

- i. That the complainants have got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 22.03.2012. That the complainants are estopped by their own acts, conduct, acquiescence, laches, omissions, etc. from filing the present complaint.
- ii. That the respondent has already offered possession of the unit in question to the complainants, who have taken the possession of the said unit and moreover, the conveyance deed has also been executed. That the transaction between both the parties stood satisfied, as such, the respondent has already complied with its obligations under the buyer's agreement. The reliefs sought in the false and frivolous complaint are barred by estoppel. That the conveyance deed of the unit in question had already been executed in favor of the complainants as early as on 21.12.2020, whereas the present complaint has been filed on 13.11.2022,

i.e. after almost two 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.45,481/- as benefit as EDC interest and Rs.48,710/- on account of early payment rebate (EPR), Rs.21,110/- towards anti profiting. It is submitted that the respondent even credited an amount to the tune of Rs.3,00,000/- 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 complainants may have raised any such additional claim or if they may have been dissatisfied with the awarded compensation. Thus, it is abundantly clear that the execution of conveyance deed was without any undue influence and coercion. The present complaint is an afterthought with malafide intent to enrich themselves.

- iii. That the complainants are not "allottees" but investors who have booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale.
- iv. The complainants have alleged that the respondent was obligated to offer possession of the unit in question by August, 2015 and by way of the instant complaint, has sought interest for indemnifying them for the alleged delay in delivery of the unit in question. That cause of action, if any, for seeking interest accrued in favor of the complainants arise in 2015 and consequently the instant complaint is barred by limitation.

- v. That the complainants have not come before this Authority with clean hands and have suppressed vital and material facts from this Authority.
- vi. That the original allottee i.e., M/s Auto Décor, a Partnership firm, through its partners Mr. Vivek Sachdev and Ms. Anuradha Sachdev had approached the respondent and expressed an interest in booking an apartment in the residential group housing colony developed by the respondent and booked the unit in question, bearing number PGN-02-0302, 3rd Floor, Tower-02 admeasuring 1900 sq. ft. situated in the project developed by the Respondent, known as "Palm Gardens" at Sector 83, Village Kherki Daula, Gurugram, Haryana. That thereafter the original allottee vide application form dated 13.02.2012 applied to the respondent for provisional allotment of a unit bearing number PGN-02-0302 in the project. That the original allottee prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the original allottee was fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondent to undertake development of the same, that the original allottee took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondent. The original allottee consciously and willfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that the original allottee shall remit every installment on time as per the payment schedule. The respondent had no reason to suspect bonafide of the original allottee. That the respondent issued the provisional allotment letter dated 22.02.2012 to the original allottee.
- vii. That subsequently, the respondent sent the buyer's agreement to the original allottee, which was executed between the parties on 22.03.2012.

That the buyer's agreement was consciously and voluntarily executed by the original allottee after reading and understanding the contents thereof to its full satisfaction.

- viii. That thereafter the original allottee executed an agreement to sell dated 01.03.2014 in favor of the complainants for transferring and conveying rights, entitlement and title of the original allottee in the unit in question to the complainants.
- ix. That the complainants further executed an indemnity cum undertaking dated 21.03.2014 and an affidavit dated 21.03.2014 whereby the complainants had consciously and voluntarily declared and affirmed that they would be bound by all the terms and conditions of the provisional allotment in favor of the original allottee. It was further declared by the complainants that having been substituted in the place of the original allottee, they were not entitled to any compensation for delay, if any, in delivery of possession of the unit in question or any rebate under a scheme or otherwise or any other discount, by whatever name called, from the respondent. Similarly, the original allottee had also executed an indemnity cum undertaking and an affidavit on the same lines. Further, the respondent issued the nomination letter dated 27.03.2014 in favor of the complainants. Respondent, at the time of endorsement of the unit in question in their favor, had specifically indicated to the complainants that the original allottee had defaulted in timely remittance of the installments pertaining to the unit in question and therefore, have disentitled themselves for any compensation/interest. The respondent had conveyed to the complainants that on account of the defaults of the original allottee, the complainants would not be entitled to any compensation for delay, if any. That in the manner as aforesaid, the complainants stepped into the shoes of the original allottee.

- x. That the rights and obligations of the complainants as well as the respondent are completely and entirely determined by the covenants incorporated in the buyer's agreement which continue to be binding upon the parties thereto with full force and effect. Clause 10(a) of the buyer's agreement provides that subject to the allottee having complied with all the terms and conditions of the buyer's agreement, and not being in default of the same, possession of the apartment would be handed over within 36 months from the date of start of construction. It has further been specified in the same clause that the respondent will be entitled to a grace period of 3 months. Clause 10(b) provides that the time period for delivery of possession shall stand extended on the occurrence of delay for reasons beyond the control of the respondent. In terms of clause 10(b)(iv) in the event of default in payment of amounts demanded by the respondent as per the schedule of payment under the buyer's agreement, the time for delivery of possession shall also stand extended.
- xi. That the complainants as well as the original allottee were not forthcoming with the outstanding amounts as per the schedule of payments. The respondent was constrained to issue payment letters and reminders to the complainants. The respondent had categorically notified the complainants that they had defaulted in remittance of the amounts due and payable by them. It was further conveyed by the respondent to the complainants that in the event of failure to remit the amounts mentioned in the said notice, the respondent would be constrained to cancel the provisional allotment of the unit in question.
- xii. That clause 12(c) 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 installments as per the payment

plan incorporated in the agreement. Therefore, the complainants, being defaulters, are not entitled to any compensation from the respondent. That the complainants are conscious and aware of the fact that they are not entitled to any right or claim against the respondent. The complainants have intentionally distorted the real and true facts and has filed the present complaint in order to harass the respondent and mount undue pressure upon it.

- xiii. That furthermore, in clause 12(d) of the buyer's agreement it has been specified that in case of delay caused due to non-receipt of occupation certificate, completion certificate or any other permission/sanction from the competent authorities, no compensation or any other compensation shall be payable to the allottees. That the respondent completed construction and had submitted an application on 07.02.2019 for grant of occupation certificate before the concerned statutory authority. The occupation certificate has been granted by the concerned department vide memo dated 17.10.2019. That once an application for grant of occupation certificate is submitted to the concerned statutory authority the respondent ceases to have any control over the same. The grant of occupation certificate is the prerogative of the concerned statutory authority and the respondent does not exercise any influence over the same. Therefore, the time period utilized by the concerned statutory authority for granting the occupation certificate is liable to be excluded from the time period utilized for implementation of the project.
- xiv. That in the meanwhile, the project was registered under the provisions of the Act. Registration certificate granted by the Haryana Real Estate Regulatory Authority vide memo no. HRERA-142/2017/1712 dated 24.10.2017. Furthermore, the registration has been extended by the Hon'ble Authority vide certificate dated 02.08.2019 without admitting or

acknowledging in any manner the truth or legality of the allegations leveled by the complainants and without prejudice to the contentions of the respondent, it is respectfully submitted that the complaint preferred by the complainants is devoid of any cause of action. That the registration of the project was valid till 31.12.2019.

- xv. That the respondent on receipt of the occupation certificate, offered possession of the said unit to the complainants vide the letter of offer of possession dated 05.12.2019. The complainants have failed to comply with their obligations to take the possession of the unit in question. The instant complaint is a gross misuse of process of law. Therefore, no cause of action has accrued in favor of the complainants in the facts and circumstances of the case.
- xvi. 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 favor 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. That an offer for possession marks termination of the period of delay, if any. The complainants are not entitled to contend that the alleged period of delay continued even after receipt of offer for possession. The complainants have consciously and maliciously refrained from obtaining possession of the unit in question. Consequently, the complainants are

liable for the consequences including holding charges, as enumerated in the buyer's agreement, for not obtaining possession.

- xvii. That the complainants approached the respondent in order to take the possession of the said unit in question. That an indemnity cum undertaking for possession dated 04.01.2020 was executed by the complainants in favour of the respondent on the mutual agreed terms and conditions. That after execution of the unit handover letter and obtaining of possession of the unit in question and after the execution of the conveyance deed, the complainants are left with no right, entitlement or claim against the respondent. The transaction between the complainants and the respondent stands concluded and no right or liability can be asserted by the respondent or the complainants against the other. The instant complaint is a gross misuse of process of law. The contentions advanced by the complainants in the false and frivolous complaint are barred by estoppel.
- xviii. 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.
- xix. That the project has got delayed on account that the contractor hired by the respondent i.e., ILFS (M/s Infrastructure Leasing & Financial Services), a reputed contractor in real estate, started raising certain false and frivolous issues with the respondent due to which they had slowed down the progress of work at site. The respondent was constrained to issue several letters to ILFS requesting it to proceed and complete the construction work in accordance with the decided schedule. However,

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

- xx. That it is submitted that several allottees, including the complainants have defaulted in timely remittance of payment of installments which was an essential, crucial and an indispensable requirement for conceptualization and development of the project in question. The respondent, despite default of several allottees, has diligently and earnestly pursued the development of the project in question and has constructed the project in question as expeditiously as possible.
- xxi. 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.
- xxii. That all the demands raised by the respondent are strictly in accordance with the terms and conditions of the buyer's agreement duly executed and agreed to between the parties. Moreover, once application for grant of occupation certificate is submitted by the respondent in the office of concerned statutory authority, the respondent ceases to have any control over the same. The respondent cannot regulate the functioning of the concerned statutory authority. Therefore, no default or lapse can be attributed to the respondent. It is evident from the entire sequence of

events, that no illegality can be attributed to the respondent. The allegations leveled by the complainants are totally baseless. Thus, the present complaint deserves to be dismissed at the very threshold.

- xxiii. That the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. It is further submitted that merely because the Act applies to ongoing projects which are registered with the authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainants for seeking interest cannot be called in to aid in derogation and ignorance of the clauses of the agreement. Interest is compensatory in nature and cannot be granted in derogation and ignorance of the clauses of the agreement. It is submitted that the construction of the project was affected on account of unforeseen circumstances beyond the control of the respondent developer. That the respondent was faced with certain other force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. It is pertinent to state that the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide Order dated 2.11.2015 mining activities by the newly allotted mining contracts by the State of Haryana was stayed on the Yamuna riverbed. These orders infact *inter-alia* continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High Court and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping

of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was almost 2 years that the scarcity as detailed aforesaid continued, despite which all efforts were made and materials were procured at 3-4 times the rate and the construction continued without shifting any extra burden to the customer. The time taken by the respondent to develop the project is the usual time taken to develop a project of such a large scale. Further, the parties have agreed that in the event of delay, the allottee shall be entitled to compensation on the amounts paid by the allottee, which shall be adjusted at the time of handing over of possession/execution of conveyance deed subject to the allottee not being in default under any of the terms of the agreement.

- xxiv. Therefore, if this Authority has to determine delay on the basis of the estimated time period provided in the said agreement, it has to do so on the strict interpretation of the said clause. The said clause categorically reads that the time period mentioned for handing over of possession is also dependent on the complainants making timely payment of all installments.
- xxv. That all the facts and submissions set out in the complaint are incorrect and are denied as if the same are specifically set out herein and traversed, except those which are specifically admitted herein.
6. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

D. Jurisdiction of the authority:

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

E. I Territorial jurisdiction

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

E. II Subject matter jurisdiction

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

Section 11(4)(a)

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

Section 34-Functions of the Authority:

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

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

F. Findings on the objections raised by the respondent:

F.I Whether the complaint is being barred by limitation?

11. 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.
12. In the present matter the possession of the unit was to be offered on or before 09.11.2015 after completion of the project but the same was offered only on 05.12.2019 after receipt of occupation certificate on 17.10.2019 and ultimately leading to execution of conveyance deed of the same on 21.12.2020. So, limitation if any, for a cause of action would accrue to the complainant w.e.f. 05.12.2019. The present complaint seeking delay possession charges and other reliefs was filed on 21.11.2022 i.e., within three years w.e.f. 05.12.2022. 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.
13. In view of the above, the present complaint is filed within the limitation.

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

14. The respondent submitted that the complainant had executed the conveyance deed on 21.12.2020 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.

15. 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."*

16. 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.

F.III Whether the subsequent allottee had stepped into the shoes of original allottee before the date of handing over of possession?

17. The complainants/subsequent allottees had been acknowledged as an allottee by the respondent vide nomination letter dated 27.03.2014. The authority has perused the nomination letter where the promoter has confirmed the transfer of allotment in favour of subsequent allottee, Mr. Ankush Kuthiala and Mrs. Monisha Agrawal (complainants) and the instalments paid by the original allottee i.e., M/s Auto Decor, is adjusted in the name of the subsequent allottees. Similarly, Authority has also perused the builder buyer's agreement which was originally entered into between the original allottee i.e., M/s Auto Decor, and the promoter, M/s Emaar MGF Land Limited. The same builder buyer's agreement has been endorsed in favour of Mr. Ankush Kuthiala and Mrs. Monisha Agrawal (complainants/subsequent allottee). All the terms of builder buyer's agreement remain the same so it is

quite clear that the subsequent allottees has stepped into the shoes of the original allottee vide nomination letter dated 27.03.2014 i.e., before the due date of offer of possession.

18. Though the promised date of delivery was 09.11.2015 but the construction of the tower in question was not completed by the said date and it was offered by the respondent only on 05.12.2019 i.e. after delay of 4 years 26 days. If these facts are taken into consideration, the complainants/subsequent allottees had agreed to buy the unit in question with the expectation that the respondent/promoter would abide by the terms of the builder buyer's agreement and would deliver the subject unit by the said due date. At this juncture, the subsequent purchaser cannot be expected to have knowledge, by any stretch of imagination, that the project will be delayed, and the possession would not be handed over within the stipulated period. So, the authority is of the view that in cases where the subsequent allottees had stepped into the shoes of original allottee before the due date of handing over possession, the delayed possession charges shall be granted w.e.f. due date of handing over possession.

G. Findings on the relief sought by the complainant:

- G.I Direct the respondent to pay interest at the rate of 18% on account of the delay in offering possession on Rs.1,41,94,499/- paid by the complainant as sale consideration of the said flat from the date of payment till the date of delivery of possession.**
19. 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."

20. Clause 10 of the buyer's agreement dated 22.03.2012 provides for handing over of possession and is reproduced below:

"10. POSSESSION

(a) Time of handing over the Possession

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

21. 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.

22. **Due date of possession and admissibility of grace period:** The promoter has proposed to handover 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 six months for applying and obtaining completion certificate/occupation certificate in respect of said floor and/or project. The construction commenced on 09.08.2012 as per statement of account dated 13.06.2023. The period of 36 months expired on 09.08.2015. Further, the complainant-builder has submitted that a grace period of 3 months may be allowed to it for applying and obtaining the completion certificate/occupation certificate in respect of the unit and/or the project in terms of order dated 08.05.2023 passed by the Hon'ble Appellate Tribunal in **Appeal No.433 of 2022 titled as Emaar MGF Land Limited Vs. Babia Tiwari and Yogesh Tiwari** wherein it has been held that if the allottee 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.

23. Therefore, in view of the above judgement and considering the provisions of the Act, the authority is of the view that, the promoter is entitled to avail grace period so provided in the agreement for applying and obtaining the occupation certificate. Therefore, the due date of handing over of possession comes out to be 09.11.2015 including grace period of 3 months.
24. **Admissibility of delay possession charges at prescribed rate of interest:**
The complainant are seeking delay possession charges however, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lenning to the general public.

25. 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.

26. 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%.

27. **Rate of interest to be paid by the complainants in case of delay in making payments** - The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

28. 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.

29. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the Authority is

satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per agreement. By virtue of clause 10 (a) of the buyer's agreement executed between the original allottee and respondent on 22.03.2012, the possession of the subject unit to handover within thirty-six months from the date of start of construction i.e., 09.08.2012 along with grace period of 3 months, for applying and obtaining the completion certificate/ occupation certificate in respect of the unit and/ or the project i.e., 09.11.2015. The complainants/subsequent allottees had been acknowledged as an allottee by the respondent vide nomination letter dated 27.03.2014. Authority has also perused the builder buyer's agreement which was originally entered into between the original allottee i.e., M/s Auto Decor, and the promoter M/s Emaar MGF Land Limited. The same builder buyer's agreement has been endorsed in favour of Mr. Ankush Kuthiala and Mrs. Monisha Agrawal (complainants/subsequent allottee). All the terms of builder buyer's agreement remain the same so it is quite clear that the subsequent allottees has stepped into the shoes of the original allottee. The complainants/subsequent allottees had agreed to buy the unit in question with the expectation that the respondent/promoter would deliver the subject unit by the said due date. At this juncture, the subsequent purchaser cannot be expected to have knowledge, by any stretch of imagination, that the project will be delayed, and the possession would not be handed over within the stipulated period. So, the authority is of the view that in cases where the subsequent allottees had stepped into the shoes of original allottee before the due date of handing over possession, the delayed possession charges shall be

granted w.e.f. due date of handing over possession Therefore, the due date of handing over of possession come out to be 09.11.2015. The occupation certificate was granted by concerned authority on 17.10.2019 and thereafter the possession of the subject unit was offered to the complainants on 11.11.2019. Therefore, the authority allows DPC as per the buyer's agreement i.e., 09.11.2015 till the date of handing over of possession i.e., 11.07.2020. Copies of the same have placed on record. 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 22.03.2012 to handover the possession within the stipulated period.

30. 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 17.10.2019. The respondent offered the possession of the unit in question to the complainant on 05.12.2019. So, it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. The handover letter was given to the complainants on 11.07.2020. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 month of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he must 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., 09.11.2015 till the date of offer of possession i.e., 05.12.2019 plus two months or actual handing over of possession whichever is earlier.

31. An amount of Rs.3,00,000/- already paid by the respondent as delayed compensation to the complainant as per statement of account dated 13.06.2023 may be adjusted as the same is already paid towards delay in handing over of the possession of the unit to the complainant.
32. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at rate of the prescribed interest @ 10.95% p.a. w.e.f. from the due date of possession i.e., 09.11.2015 till the date of offer of possession plus two months i.e., 05.02.2020 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.2,63,072/- amount unreasonably charged in the name of "other charges" and other heads after execution of buyer's agreement between respondent and complainants.**
 - G.III **Direct the respondent to return entire amount paid as GST Tax by complainant between 01.07.2017 to 12.04.2018.**
 - G.IV **Direct the complainant's bank to remove the lien marked over fixed deposit of Rs.2,00,276/- in favour of respondent on the pretext of future payment of HVAT for the period of (01.04.2014 to 30.06.2017) and also order to direct respondent to assist the process of removing lien from complainant's bank by providing NOC for the same.**
33. The above mentioned reliefs no. G.II, G.III and G.IV as sought by the complainants are being taken together as the findings in one relief will affect the result of the other reliefs and these reliefs are interconnected.
34. That the financial liabilities between the allottee and the promoter comes to an end after the execution of the conveyance deed. The complainants could have asked for the claim before the conveyance deed got executed between the parties. Therefore, after execution of the conveyance deed the

complainant-allottee cannot seek refund of charges other than statutory benefits, if any pending. Once the conveyance deed is executed and accounts have been settled, no claims remain. So, no directions in these regard can be effectuated at this stage.

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

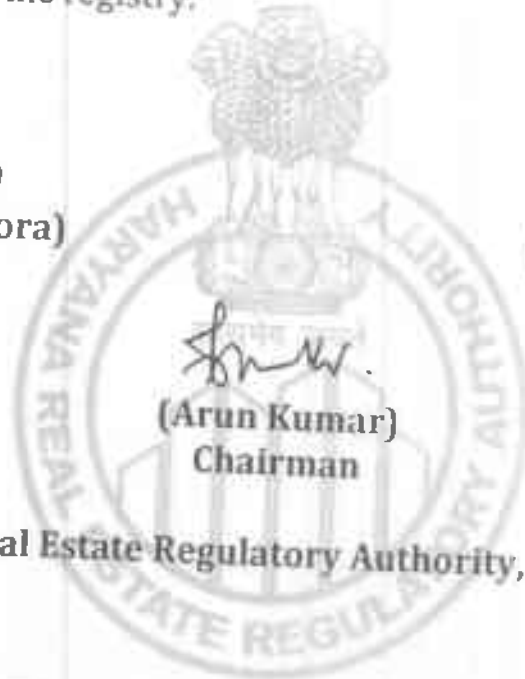
35. The complainant is also seeking relief w.r.t. litigation expenses & compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.* (supra), has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72.

H. Directions of the Authority:

36. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:
- The respondent/promoter is directed to pay delayed possession charges at the prescribed rate of interest i.e., 10.95 % per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 09.11.2015 till the date of offer of possession plus two months or the date of handing over whichever is earlier as per proviso to section 18(1) of the Act read with rule 15 of the rules after adjusting the amount if any, paid towards the delay in handing over the possession of the unit to the complainants.

- ii. The amount of compensation of Rs.3,00,000/- already paid to the complainant as per statement of account dated 13.06.2023 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.
37. Complaint stands disposed of.
38. File be consigned to the registry.

(Demitted Office)
(Sanjeev Kumar Arora)
Member




(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated:09.07.2024