

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

Complaint no. :	6260 of 2022
Date of filing complaint:	15.09.2022
Date of decision:	13.08.2024

Smt. Poonam Goel Sh. Ajay Goel R/O: R-3/13, Rajnagar Ghaziabad 201001 , Uttar Pradesh	Complainants
Versus	
Emaar India Limited Office: EMAAR MGF land Ltd. ECE House, 28 Kasturba Gandhi Marg, New Delhi I 10001	Respondent
CORAM:	
Shri Arun Kumar	Chairman
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
APPEARANCE:	
Sh. Jagdeep kumar (Advocate)	Complainants
Sh. J.K Dang (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:

S.no.	Heads	Information
1.	Name of the project	Gurgaon Greens, Sector 102, Gurugram, Haryana
2.	Total area of the project	13.531 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no. and validity	75 of 2012 dated 31.07.2012 Valid 30.07.2020
5.	Name of licensee	Kamdhenu Projects Pvt. Ltd. & anr.
6.	HRERA registered/ not registered	Registered vide no. 36(a) of 2017 dated 05.12.2017 for 95829.92 sq. mtrs.
7.	HRERA registration valid up to	31.12.2018
8.	HRERA extension of registration vide	01 of 2019 dated 02.08.2019
9.	Extension valid up to	31.12.2019
10.	Unit no.	GGN-20-0501, 05 th floor, tower no. 20 [annexure R3, page 47 of reply]
11.	Unit measuring (super area)	1650 sq. ft.
12.	Provisional allotment letter dated	28.01.2013 [annexure R2, page 33 of reply]
13.	Date of execution of buyer's agreement	22.04.2013 [annexure R3, page 44 of reply]
14.	Possession clause	14. POSSESSION

		<p>(a) Time of handing over the Possession</p> <p><i>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 <u>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.</u></i></p> <p>(emphasis supplied) [annexure R3, page 60 of reply]</p>
15.	Date of start of construction as per statement of account dated 19.09.2022 at page 136 of reply	16.06.2013
16.	Due date of possession	16.11.2016 [as per possession clause 36 months from date of start of construction i.e., 16.06.213 plus grace period of 5 months]
17.	Total consideration as per statement of account dated 19.09.2022 at page 136 of reply	Rs.96,40,123/-

18.	Total amount paid by the complainants as per statement of account dated 19.09.2022 at page 137 of reply	Rs.98,39,686/-
19.	Occupation certificate	30.05.2019 [annexure R8, page 143 of reply]
20.	Offer of possession	31.05.2019 [annexure R9, page 146 of reply] <i>[inadvertently date of offer of possession is mentioned as 11.12.2019 in the proceedings of the day dated 13.08.2024]</i>
21.	Unit handover letter dated	11.12.2019 [Page 155 of reply]
22.	Conveyance deed executed on	03.02.2020 [Page 159 of reply]
23.	Delay compensation already paid by the respondent for delay in handing over possession as per statement of account dated 19.09.2022 at page 136 of reply	Rs. 1,88,575/-

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:

- i. That somewhere in the month of January 2012, the respondent through its business development associate approached the complainant 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. The complainant while relying upon the assurances and believing them to be true, booked a residential flat bearing No. 501 on 5th Floor in Tower – 20 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 complainant has paid Rs. 7,50,000/- through cheque bearing No. 000001 as booking amount on 24.01.2012.

- ii. That in the said application form, the price of the said flat was agreed at the rate of Rs.4507/- 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.
- iii. That approximately after one year on 28.01.2013 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. The respondent exorbitantly increased the net consideration value of my flat by adding EDC, IDC and PLC and when complainant opposed the unfair trade practices of respondent they inform that EDC, IDC and PLC are just the government levies and they are as per the standard rules of government and these are just approximate values which may come less at the end of project and same can be proportionately adjusted on prorata basis and about the delay payment charges of 24% they said this is standard rule of company and company will also compensate at the rate of Rs 7.5 per sq ft per month in case of delay in possession of flat by company. The complainant opposed these illegal, arbitrary, unilateral and discriminatory terms of



provisional allotment letter but as there is no other option left with complainant because if complainant stop the further payment of installments then in that case respondent forfeit 15% of total consideration value from the total amount paid by complainant. Thereafter on 22.04.2013 builder buyer agreement was executed between the parties.

- iv. That as per the Clause - 14 of the said builder buyer agreement dated 22.04.2013, 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 16.06.2016 (sic. 16.11.2016 including grace period of 5 months).
- v. That from the date of booking 24.01.2012 and till 08.12.2019, the respondent had raised various demands for the payment of installments on complainant towards the sale consideration of said flat and the complainant have duly paid and satisfied. The complainant were and have always been ready and willing to fulfill their part of agreement, if any pending.
- vi. That as per schedule of payments of buyer's agreement the sales consideration for said flat was Rs.89,34,983/- (which includes the charges towards basic price - Rs.74,36,583/-, Govt Charges (EDC & IDC) Rs.5,70,900/-, club membership - Rs.50,000/-, IFMS - Rs.82,500/-, car park - Rs.3,00,000/- and PLC for central green Rs.4,95,000/-) exclusive of Service Tax and GST, but later at the time of possession respondent



- added Rs 75,076/- in sale consideration and increase sale consideration to Rs.90,10,059/- 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. The respondent increased the sale consideration by Rs.1,57,576/- (Rs. 75076 + Rs. 82500) without any reason, which is an illegal, arbitrary, unilateral and unfair trade practice. The complainant opposed the increase in sales consideration at time of possession, but respondent did not pay any attention to complainant.
- vii. That the complainant has paid the entire sale consideration along with applicable taxes to the respondent for the said flat. As per the statement dated 09.09.2022, issued by the respondent, upon the request of the complainant, the complainant have already paid Rs. 98,39,686/- towards total sale consideration and applicable taxes as on today to the respondent as demanded time to time and now nothing is pending to be paid on the part of complainant. The complainant thereafter kept running from pillar to post asking for the delivery of his home but could not succeed in getting any reliable answer.
- viii. That the conduct on part of respondent regarding delay in delivery of possession of the said flat has clearly manifested that respondent never ever had any intention to deliver the said flat on time as agreed. 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 31.05.2019 (inadvertently mentioned in the proceeding of the day as 11.12.2019) with stringent condition to pay certain amounts which are never be a part of agreement. As on 31.05.2019 the project was delayed approx. three years. At the time of offer of possession builder did not adjust the penalty for delay

possession as per RERA Act 2016. The respondent also demanded an indemnity-cum-undertaking along with final payment, which is illegal and unilateral demand. The 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. The 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. 2,43,760/- on the pretext of future liability against HVAT for the period of (01-April-2014 to 30-June-2017) which is also an unfair trade practice. The complainant 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 to answer any enquiry before getting complete payment against his final demand. The respondent left no other option to complainant, but to pay the payment of two-year maintenance charges Rs.1,44,540/- and Submit a Fixed Deposit of Rs. 2,43,760/- with a lien marked in favour of Emaar MGF Land Limited and Rs. 3,29,280/- towards e-Stamp duty and Rs.45,000/- towards registration charges of above said unit no. 0501, tower 20, Gurgaon Greens in addition to final demand raised by respondent along with the offer of possession. The respondent gave physical handover of aforesaid property on date 11.12.2019.

- ix. That after taking possession of flat on 11.12.2019 the complainant 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 24.01.2012, area of central park was told 8 acres 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. The 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. The respondent did not provide the final measurement of above said unit no. 0501, tower no. 20, "Gurgaon Greens" and there is no architect confirmation provided by respondent about the final unit area which respondent was going to handover to complainant.

- x. That the GST Tax which has come into force on 01.07.2017, it is a fresh tax. The possession of the apartment was supposed to be delivered to complainant on 16.06.2016, therefore, the tax which has come into existence after the due date of possession (16 June 2016) of flat, this extra cost should not be levied on complainant, since the same would not have fallen on the complainant if respondent had offer the possession of flat within the time stipulated in the builder buyer agreement.
- xi. That on 19.11.2019 complainant inform respondent telephonically that respondent is creating anomaly by not compensating the complainant for delay possession charges at the rate of interest specified in RERA Act 2016. Whenever complainant enquire about the delay possession charges, respondent making excuse of getting approval from directors, but till date respondent did not credit the delay possession interest.

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 delay in offering possession on Rs.98,39,686/- paid by the

complainant as sale consideration of the said flat from the date of payment till the date of delivery of possession.

- II. Direct the respondent to return Rs.1,57,576/- amount unreasonably charged by the respondent by increasing sale price after execution of buyer's agreement between respondent and complainants.
- III. Direct the respondent to return entire amount paid as GST by complainants between 01.07.2017 to 24.07.2019.
- IV. Direct the complainants bank to remove the lien marked over fixed
- V. deposit of Rs.2,52,929/- in favour of respondent on the pretext of future of HVAT for the period of 01.04.2014 to 30.06.2017 and also order to direct the respondent to assist the process of removing lien from the complainants bank by providing NOC for the same.
- VI. Direct the respondent to pay an amount of Rs. 55,000/- to the complainant as cost of the present litigation.

D. Reply by respondent:

5. The respondent by way of written reply made following submissions:
 - i. That the complainants are not "Allottees" but investors who have purchased the apartment in question as a speculative investment.
 - ii. That the complainants had approached the respondent and expressed their interest in booking an apartment in the residential group housing project being developed by the respondent known as "Gurgaon Greens" situated in Sector 102, Village Dhankot, Tehsil & District Gurugram.
 - iii. That the complainants were provisionally allotted apartment no GGN-20-0501, admeasuring 1650 sq. ft. approx. saleable area, in the said project. The complainants had opted for an instalment/construction

linked payment plan. The buyer's agreement was executed between the complainants and the respondent on 22.04.2013.

- iv. That the complainants had opted for an instalment/construction linked payment plan. Although the complainants had agreed and undertaken to make timely payments in accordance with the payment schedule, but the complainants were irregular in payment of instalments. The respondent issued notices and reminders for payment calling upon the complainants to make payment as per the payment plan.
- v. That in the meanwhile, the respondent registered the project under the provisions of the Act. The project had been initially registered till 31.12.2018. Subsequently, the registration of the project was extended uptill 31.12. 2019. In the meanwhile, the respondent completed construction of the tower in which the apartment in question is situated and applied for the occupation certificate in respect thereon on 31.12.2018. 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 of the occupation certificate. No fault or lapse can be attributed to the respondent in the facts and circumstances of the case. Therefore, the time period utilised by the statutory authority to grant occupation certificate to the respondent is necessarily required to be excluded from computation of the time period utilised for implementation and development of the project.

- vi. That upon receipt of the occupation certificate, the respondent offered possession of the apartment in question to the complainants vide letter dated 31.05.2019. The complainants were called upon to remit balance amount as per the attached statement and also to complete the necessary formalities and documentation so as to enable the respondent to hand over possession of the apartment to the complainants.
- vii. That the complainants took possession of the apartment in question on 11.12.2019. Thereafter, conveyance deed bearing Vasika No. 13239 dated 03.02.2020 has also been got registered. It is pertinent to note, that the complaint was filed almost around 3 years after execution of the conveyance deed. The present complaint has been filed as an afterthought to extract monies from the respondent. Thus, the present complaint is time barred and deserves to be dismissed at this very threshold with exemplary costs. Therefore, the transaction between the complainant and the respondent has been concluded in February 2020 and the complainant is not left with any claim against the respondent. The present complaint is nothing but a gross misuse of process of law.
- viii. That it is submitted that the respondent has duly fulfilled its contractual obligations under the buyer's agreement and therefore the institution of the present false and frivolous complaint is absolutely unjustified and unwarranted.
- ix. That the respondent had completed construction of the apartment/tower by December 2018 and had applied for issuance of the occupation certificate on 31.12.2018. The occupation certificate was issued by the competent authority on 30.05.2019. It is respectfully submitted that after submission of the application for issuance of the occupation certificate, the respondent cannot be held liable in any manner for the time taken by the competent authority to process the

application and issue the occupation certificate. Thus, the said period taken by the competent authority in issuing the Occupation Certificate as well as time taken by Government/Statutory Authorities in according to approvals, permissions etc., necessarily have to be excluded while computing the time period for delivery of possession.

- x. That it is pertinent to mention herein that compensation amounting to Rs.1,88,575/- was credited to the complainants although in accordance with the buyer's agreement, the complainants, being in default of the buyer's agreement is/was not entitled to any compensation from the respondent. Further an amount of Rs. 5,984/- was credited towards EPR and an amount of Rs. 55,672 towards anti-profiting was also credited to the complainant.
- xi. That the respondent was adversely affected by various construction bans, lack of availability of building material, regulation of the construction and development activities by the judicial authorities including NGT in NCR on account of the environmental conditions, restrictions on usage of ground water by the High Court of Punjab & Haryana, demonetization etc. and other force majeure circumstances, yet, the respondent completed the construction of the project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the complainants and demanding the prices only as and when the construction was being done.
- xii. That the HVAT payment request letter dated 17.04.2017 had been issued by the respondent to the complainants. The respondent had specifically mentioned that it had opted for the Amnesty Scheme (Haryana Tax Compliance Scheme, 2016) which was applicable for VAT liability arising till 31.03.2014. Moreover, the demand related to VAT liability pertaining

to the period from 01.04.2014 onwards would be raised by the respondent as and when it is ascertained.

- xiii. That the list of the developers who had opted for the lumpsum Scheme/Composition Scheme under Rule 49A of HVAT Rules, 2003 which was floated by the Government for the period of 2014 to 2017 has been appended as Annexure B. The aforesaid list has been procured from the official website of Excise & Taxation Department, Government of Haryana. It is evident that the respondent developer had not opted for the aforementioned scheme. Thus, the Developer has legally and validly charged HVAT from the complainants. Moreover, the lien marked over Fixed Deposit of Rs.2,52,929/- in favour of respondent for future payment of HVAT has been legally and validly done so by the respondent.
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.

E. 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. Objections raised by the respondent:

F.I Whether complainant is an investor and not an allottee?

11. The respondent took a stand that the complainant is investor and not consumers and therefore, he is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the allotment letter, it is revealed that the

complainant is buyers, and he has paid a total price of Rs.98,39,686/- to the promoter towards purchase of a unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

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

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

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

13. The respondent stated that the complainants have alleged that the possession of the unit was to be given not later than June 2016 (sic. November 2016 including the grace period of five months) and therefore cause of action, if any, accrued in favour of the complainants in 2016. The transaction between the parties stands concluded upon the execution of conveyance deed as the same was executed in favour of the complainant on 03.02.2020.

14. It has been contended by the respondent that on execution of conveyance deed, the relationship between both the parties stands concluded and no right or liabilities can be asserted by the respondent or the complainant against the other. Therefore, the complainants are estopped from claiming any interest in the facts and circumstances of the case.
15. It is important to look at the definition of the term 'deed' itself in order to understand the extent of the relationship between an allottee and promoter. A deed is a written document or an instrument that is sealed, signed and delivered by all the parties to the contract (buyer and seller). It is a contractual document that includes legally valid terms and is enforceable in a court of law. It is mandatory that a deed should be in writing and both the parties involved must sign the document. Thus, a conveyance deed is essentially one wherein the seller transfers all rights to legally own, keep and enjoy a particular asset, immovable or movable. In this case, the assets under consideration are immovable property. On signing a conveyance deed, the original owner transfers all legal rights over the property in question to the buyer, against a valid consideration (usually monetary). Therefore, a 'conveyance deed' or 'sale deed' implies that the seller signs a document stating that all authority and ownership of the property in question has been transferred to the buyer.
16. From the above, it is clear that on execution of a sale/ conveyance deed, only the title and interest in the said immovable property (herein the allotted unit) is transferred. However, the conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the said unit whereby the right, title and interest has been transferred in the name of the allottee on execution of the conveyance deed.

17. The allottees have invested their hard-earned money and there is no doubt that the promoter has been enjoying benefits of and the next step is to get their title perfected by executing a conveyance deed which is the statutory right of the allottee. Also, the obligation of the developer - promoter does not end with the execution of a conveyance deed. Therefore, in furtherance to the Hon'ble Apex Court judgement and the law laid down in case titled as ***Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd. (now Known as BEGUR OMR Homes Pvt. Ltd.) and Ors. (Civil appeal no. 6239 of 2019) dated 24.08.2020***, the relevant paras are reproduced herein below:

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

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

18. The authority has already taken a view in in ***Cr. no. 4031/2019 and others tiled as Varun Gupta V/s Emaar MGF Land Limited and others*** and observed that the execution of a conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the subject unit and upon taking possession, and/or executing conveyance deed, the complainants never gave up his statutory right to seek delayed possession charges as per the provisions of the said Act.
19. After consideration of all the facts and circumstances, the authority holds that even after execution of the conveyance deed, the complainants- allottee cannot be precluded from his right to seek delay possession charges from the respondent-promoter.

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

20. 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.
21. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in MA NO. 21 of 2022 of Suo Moto Writ Petition Civil No. 3 of 2020 have held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for purpose of limitation as maybe prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

22. In the present matter the cause of action arose on 31.05.2019 when the offer of possession was made by the respondent to the complainant. The complainant has filed the present complaint on 15.09.2022 which is 3 years 3 months and 15 days from the date of cause of action. In the present matter the three year period of delay in filing of the case also after taking into account the exclusion period from 15.03.2020 to 28.02.2022 would fall on 13.05.2024 In view of the above, the Authority is of the view that the present complaint has been filed within a reasonable period of time and is not barred by the limitation.

G. Findings on the relief sought by the complainants

G.I Direct the respondent to pay delayed possession charges.

23. 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.”

24. Clause 14 of the buyer’s agreement provides for handing over of possession and is reproduced below:

Clause 14 (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.***

25. 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.

26. **Due date of possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the unit within a period of 36 months from the start of construction. The date of start of construction is 16.06.2013. Further, it was provided in the buyer's agreement that company shall be entitled to a grace period of five months, for applying and

obtaining the completion certificate/ occupation certificate in respect of the unit and/or the project. The construction commenced on 16.06.2013 as per statement of account dated 19.09.2022. The period of 36 months expired on 16.06.2016. Further, the complainant-builder has submitted that a grace period of 5 months may be allowed to it for applying and obtaining the competition certificate/occupation certificate in respect of the unit and/or the project in terms of order dated 08.05.2023 passed by the Hon'ble Appellate Tribunal in **Appeal No.433 of 2022 titled as Emaar MGF Land Limited Vs. Babia Tiwari and Yogesh Tiwari** wherein it. Has been held that if the allottees wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining occupation certificate. The relevant portion of the order dated 08.05.2023, is reproduced as under:

"As per aforesaid clause of the agreement, possession of the unit was to be delivered within 24 months from the date of execution of the agreement i.e., by 07.03.2014. As per the above said clause 11(a) of the agreement, a grace period of 3 months for obtaining Occupation Certificate etc. has been provided. The perusal of the Occupation Certificate dated 11.11.2020 which was ultimately granted on 11.11.2020. It is also well known that it takes time to apply and obtain Occupation Certificate from the concerned authority. As per section 18 of the Act, if the project of the promoter is delayed and if the allottee wishes to withdraw then he has the option to withdraw from the project and seek refund of the amount or if the allottee does not intend to withdraw from the project and wishes to continue with the project, the allottee is to be paid interest by the promoter for each month of delay. In our opinion if the allottee wishes to continue with the project, he accepts the terms of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. So, in view of the above said circumstances, the appellant-promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the Occupation Certificate. Thus, with inclusion of grace period of 3 months as per provisions of section 11 (a) of the agreement, the total competition period becomes 27 months. Thus, the due date of delivery of possession comes out to 07.06.2014.

27. 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 16.11.2016 including grace period of 5 months.

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

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

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

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

29. 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.
30. 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., 13.08.2024 is @ 9 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11%.
31. **Rate of interest to be paid by the complainant in case of delay in making payments** - The definition of term 'interest' as defined under

section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

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

Explanation. —For the purpose of this clause—

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

32. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11 % by the respondent/promoters which the same is as is being granted to them in case of delayed possession charges.
33. 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 the agreement. By virtue of clause 14 of the agreement, the possession of the subject apartment was to be delivered within 36 months from the date of start of construction. For the reasons quoted above, the due date of possession is to be calculated from the date of start of construction i.e., 16.06.2013 and the said time period of five months is allowed, therefore due date of possession comes out to be 16.11.2016. The occupation certificate was granted by concerned authority on 30.05.2019 and thereafter the possession of the subject unit was offered to the complainant

on 01.06.2019. Therefore, the authority allows DPC as per the buyer's agreement from due date of possession i.e., 16.11.2016 till the date of offer of possession i.e., 31.05.2019 (inadvertently mentioned in the proceeding of the day as 11.12.2019) plus two months or date of handing over of possession whichever is earlier after adjustment of delayed compensation already paid. . 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 05.04.2013 to handover the possession within the stipulated period.

34. 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 30.05.2019. The respondent offered the possession of the unit in question to the complainant on 31.05.2019 (inadvertently mentioned in the proceeding of the day as 11.12.2019) . 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 11.12.2019. 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 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., 16.11.2016 till the date of offer of possession i.e., 31.05.2019 (inadvertently

mentioned in the proceeding of the day as 11.12.2019) after obtaining occupation certificate plus two months or actual handing over of possession whichever is earlier.

35. An amount of Rs. 1,88,575/- has been paid by the respondent as delayed compensation to the complainants . The same amount may be adjusted as the same is paid towards delay in handing over of the possession of the unit to the complainant.
36. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at rate of the prescribed interest @ 11% p.a. w.e.f. from the due date of possession i.e., 16.11.2016 till the date of offer of possession i.e 31.05.2019 (inadvertently mentioned in the proceeding of the day as 11.12.2019) after obtaining occupation certificate plus two months or actual handing over of possession whichever is earlier as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

G.II Direct the respondent to return Rs.1,57,576/- amount unreasonably charged by the respondent by increasing sale price after execution of buyer's agreement between respondent and complainants.

G.III Direct the respondent to return entire amount paid as GST by complainants between 01.07.2017 to 24.07.2019.

G.IV Direct the complainants bank to remove the lien marked over fixed deposit of Rs.2,52,929/- in favour of respondent on the pretext of future of HVAT for the period of 01.04.2014 to 30.06.2017 and also order to direct the respondent to assist the process of removing lien from the complainants bank by providing NOC for the same.

37. 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 definitely affect the result of the other reliefs and these reliefs are interconnected.

38. That the financial liabilities between the allottee and the promoter comes to an end after the execution of the conveyance deed. The complainant could have asked for the claim before the conveyance deed got executed between the parties. Therefore, after execution of the conveyance deed the complainant-allottee cannot seek refund of charges other than statutory benefits if any pending. Once the conveyance deed is executed and accounts have been settled, no claims remain. So, no directions in this regard can be effectuated at this stage.

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

39. The complainant is seeking above mentioned relief w.r.t. litigation. 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 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:

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

- i. The respondent shall pay interest at the prescribed rate i.e., 11 % per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 16.11.2016 till the date of offer of possession i.e., 31.05.2019 (inadvertently mentioned in the




proceeding of the day as 11.12.2019) after obtaining occupation certificate plus two months or actual handing over of possession whichever is earlier as per proviso to section 18(1) of the Act read with rule 15 of the rules. Also an amount which has already been given by the respondent as credit compensation shall be deduced / adjusted towards the delay possession charges to be paid by the respondent.

- ii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11 % by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- iii. The respondent is directed to pay arrears of interest accrued, if any, after adjustment in statement of account; within 90 days from the date of this order as per rule 16(2) of the rules.

41. Complaint stands disposed of.

42. File be consigned to the registry.


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.08.2024