

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

Date of decision: 20.08.2024

NAME OF THE BUILDER		M/s S.S. Group Pvt. Ltd.	
PROJECT NAME		"The Leaf"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/248/2022	Umesh Kumar & Renu Bala V/s M/s S.S. Group Pvt. Ltd	Sh. Varun Hooda and Sh. Rahul Bhardwaj
2.	CR/5638/2022	Umesh Kumar & Renu Bala V/s M/s S.S. Group Pvt. Ltd	Sh. Varun Hooda and Sh. Rahul Bhardwaj

**CORAM:**

Shri Arun Kumar

Shri Vijay Kumar Goyal

Shri Ashok Sangwan

**Chairman****Member****Member****ORDER**

1. This order shall dispose of both the complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project,

namely "The Leaf", Sector-85, Gurugram being developed by the same respondent/promoter i.e., M/s S.S. Group Pvt. Ltd. The terms and conditions of the buyer's agreements and fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, delayed possession charges and direct the respondent to quash the illegal demands on account of P.I.C, area increase and club charges.

3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

<b>Project Name and Location</b>	The Leaf", Sector 85, Gurugram
<b>Nature of Project</b>	Residential
<b>DTCP License No. and validity</b>	81 of 2011 dated 16.09.2011 Valid up to 15.09.2024
<b>HRERA Registered</b>	Registered 23 of 2019 dated 01.05.2019
<b>Possession Clause</b>	<p><b>8. Possession</b></p> <p><b>8.1 Time of handing over the possession</b></p> <p>8.1 (a) subject to terms of this clause and subject to the flat buyer(s) 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 complied with all provisions, formalities, documentation etc. as prescribed by the developer, the developer proposes to handover the possession of the flat within a period of thirty-six (36) months from the date of signing of this agreement. The flat buyer(s) agrees and understands that the developer shall be entitled to a grace period of 90 days, after the expiry of thirty-six months or such extended period, for applying and obtaining</p>



<i>occupation certificate in respect of the Group Housing Complex.</i>						
1	2	3	4	5	6	7
S. n o.	Complaint no. / Title/ Date of Filing / Reply	Unit no. and area	Date of builder buyer agreement  Due date of possession	Date of occupation  Date of offer of possession	Total sale consideration and amount paid	Relief sought
1.	CR/248/2022 Umesh Kumar & Renu Bala V/s M/s S.S. Group Pvt. Ltd  DOF: 20.01.2022  Date of reply received : 08.07.2022	4A,4 <sup>th</sup> floor, building no. 5 admeasuring 2600 sq.ft. (page 25 of complaint)  Increase in area of the unit vide intimation of offer of possession dated 07.09.2021 : 2812 sq.ft. [Page 12 of complaint]	12.12.2013  12.03.2017  (Calculated from the date of signing of buyer agreement including grace period of 90 days) (*Note: inadvertently mentioned due date 12.12.2016 vide proceedings dated 20.08.2024)	24.08.2021  07.09.2021	TC- Rs. 1,40,08,000/  AP- Rs. 83,16,915/	1. DPC 2. Area increase 3. PLC 4. Litigation cost.
2.	CR/5638/2022 Umesh Kumar & Renu Bala V/s M/s S.S. Group Pvt. Ltd  DOF: 30.08.2022  Date of reply received : 28.02.2023	1A,1 <sup>st</sup> floor, building no. 8 admeasuring 2280 sq.ft. (page 25 of complaint)  Increase in area of the unit vide intimation of offer of possession dated 12.05.2022 : 2408 sq.ft.	18.10.2013  18-01-2017  (Calculated from the date of signing of buyer agreement including grace period of 90 days) (*Note: inadvertently mentioned due date 18.10.2016 vide proceedings dated 20.08.2024)	09.05.2022  12.05.2022	TC- Rs. 1,51,34,780/ (page 75 of reply)  AP- Rs. 83,16,915/	1. DPC 2. Area increase 3. PLC 4. Litigation cost.

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing complaint
TC	Total consideration
AP	Amount paid by the allottee(s)

4. The aforesaid complaints were filed by the complainant-allottee(s) against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of subject unit for not handing over the possession by the due date, seeking delayed possession charges and direct the respondent to quash the illegal demands on account of P.L.C, area increase and club charges.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant-allottee(s) are similar. Out of the above-mentioned cases, the particulars of lead case **CR/248/2022 Umesh Kumar & Renu Balar Vs. M/s S.S. Group Pvt. Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua the relief sought by them.

#### A. Project and unit related details

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

***CR/248/2022 Umesh Kumar & Renu Balar Vs. M/s S.S. Group Pvt. Ltd.***

S.N.	Particulars	Details
1.	Name of the project	"The Leaf", Sector 85, Gurugram
2.	Nature of project	Group Housing Complex
3.	RERA Registered/ Not Registered	Registered 23 of 2019 dated 01.05.2019
4.	DTPC License no.	81 of 2011 dated 16.09.2011
	Validity up to	15.09.2024
	Licensed area	11.9 Acres
5.	Unit no.	4A, 4 <sup>th</sup> floor, Building No. 5 [page 25 of complaint]
6.	Unit measuring	2600 Sq. Ft. (super area) [page 25 of complaint]
7.	Increase in area of the unit vide Intimation of offer of possession dated 07.09.2021	2812 sq. ft. i.e. i.e. Increased by 212 sq. ft. and in percentage 8.15% [Page 12 of complaint]
8.	Date of Allotment	19.09.2012 [page 23 of complaint]
9.	Date of execution of floor buyer's agreement	12.12.2013 [page 24 of complaint]
10.	Possession clause	<b>8. Possession</b> <b>8.1 Time of handing over the possession</b> 8.1 (a) subject to terms of this clause and subject to the flat buyer(s) 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 complied with all provisions, formalities, documentation etc. as prescribed by the developer, the developer proposes to handover the possession of the flat within a period of thirty six months from the date of signing of this agreement. The flat buyer(s) agrees and understands that the developer shall be entitled to a grace period of 90 days. after the expiry of thirty-six months or such extended period, for applying and obtaining occupation certificate in respect of the Group Housing Complex. [Page 32 of complaint]
11.	Due date of possession	12.03.2017 (Calculated from the date of signing of buyer agreement including grace period of 90 days) (*Note: inadvertently mentioned due date 12.12.2016 as grace period is not included vide proceedings dated 20.08.2024)
12.	Total sale consideration	Rs. 1,40,08,000/- (page 26 of complaint)
13.	Total amount paid by the complainant	Rs. 83,16,915/- (As per SOA dated 15.03.2017, page 52 of complaint)
14.	Occupation certificate dated	24.08.2021 (page 82 of reply)
15.	Offer of possession	07.09.2021 (page 80 of reply)

**B. Facts of the complaint**

8. The complainants have made the following submissions in the complaint: -
- a. That the respondent made advertisement in the newspapers and billboards with regard to the location, amenities and specifications of

the project under the name "The Leaf at SS City", Sector - 85, Gurugram, Haryana. Following which the complainants approached the respondent for booking of unit in the respondent's project.

- b. That the complainants paid an amount of Rs. 12,00,000/- at the time of booking on 19.09.2012 and accordingly the respondent issued allotment letter to the complainants of residential unit no.4A located on fourth floor of tower/building no. B-5 in the said group housing complex, having an approximate super area of 2600 Sq. Ft.
- c. That the complainants subsequently along with the respondent entered into apartment buyer agreement on 12.12.2013 whereby the complainants agreed to buy a residential unit no.4A located on fourth floor of tower/building no.B-5 in the said group housing complex, having an approximate super area of 2600 sq. ft. located at "The Leaf" for a total sale consideration of Rs. 1,40,08,000/- which includes BSP, EDC, IDC, Car parking charges, PLC, club membership charges.
- d. That the complainants have subsequently kept paying all the instalments as demanded by the respondent and till today has paid a total amount of Rs. 83,16,915/- out of total sale consideration of Rs. 1,40,08,000/-.
- e. That as per clause 8.1 of the buyer agreement dated 12.12.2013 the respondent was supposed to complete constructions and deliver possession of the said unit to the complainants within a period of 36 months from the date of execution of the buyer agreement, i.e. 12.12.2016, with further grace period of 90 days, meaning thereby the respondent was liable to deliver possession in all respects latest by 12.03.2017.

- f. That the respondent assured and made the complainants believe that they are developing the project at a fast pace and possession of the completed apartment along with occupation certificate would be handed over to the complainants within 36 months. The payment was to be made as per the construction linked plan which is annexed as annexure-1 of the buyer agreement.
- g. That the complainants were also looking for purchasing a residential unit for his personal use. A representative of the respondent contacted the complainants and allured him to purchase the said unit in the said project/housing complex. The representative of the company claimed that the respondent is a renowned name in the field of construction and is known to handover the possession of the project on time but all such promises have clearly failed.
- h. That the complainants vide email dated 18.10.2017 enquired regarding the status of construction from the respondent as the due date of handing over the possession had been passed and it was made clear by the complainants that no further payment of any instalments would be made till the time commitment of date of handing over possession is made.
- i. That subsequently even after passage of four years from the deemed date of possession i.e. 18.10.2017 on receiving no update regarding possession, the complainants again send an email dated 09.03.2021 enquiring the status of construction to which the respondent replied on 10.03.2021 stating that the project is still under construction.
- j. That the complainants finally after waiting for more than four and half years finally received illegal offer of possession letter which was accompanied by unreasonable and unwarranted demand of money.



- k. That the complainants time and again reminded the respondent to complete the project in time and to provide possession of the apartment despite paying the demanded amount within time but to no avail as the respondent has completely failed to complete the project within the stipulated time.
- l. That as per the buyers' agreement, the respondent undertook to handover the possession of the said unit within 36 months from the date of execution of agreement dated 12.12.2013 i.e., possession ought to have offered by the respondent by 12.12.2016. After the passing of nearly four and half years after the supposed date of completion of project or offering of possession to the complainants, the respondent has sent illegal possession letter which needs to be quashed as the same is not in accordance with the buyer agreement and the settled legal principles.
- m. That the respondent in an arbitrary manner and without any justification increased the area of the said unit by 212 sq. ft. without any change in the covered area. The super area as calculated by the respondent is erroneous and against the settled principles of law. The respondent cannot charge the complainants same amount of money for carpet area which is covered by the said unit and common area which is shared by all the allottees. Hence the demand of Rs.11,30,808/- on the account of increase of super area is liable to be quashed.
- n. That the respondent has wrongly charged preferential location charges as the same are not payable by the complainants hence, an amount of Rs. 3,60,000/-, which have already been paid by the complainants shall be refunded and fresh demand of PLC is required to be quashed.

- o. That as on 12.03.2017 i.e. the deemed date of possession, the complainants have paid an amount of Rs.83,16,915/- which were demanded in contravention to the buyer agreement as the instalments were demanded much prior to the stage of construction when they were due. Hence, no amount was payable on 12.03.2017 and any demand raised after 18.10.2017 do not qualify for levy of interest on account of non-payment as the complainants clearly communicated to the respondent that since construction period as given in the agreement had expired, any further demand would only be paid once the respondent clearly communicates date of handing over of possession, which was never done.
- p. That the respondent did not have the requisite clearances from the concerned department at the time of start of construction when the first demand were raised. The said demand were totally illegal as the construction could not have been started in the absence of the necessary governmental clearances.
- q. That the complainants are not liable to pay GST as charged by the respondent. The unit was to be delivered on 12.03.2017 and GST only became applicable post 30.06.2017 hence, if the unit was delivered timely by the respondent, the complainants would not have been liable to pay GST. It is due to the fault of respondent that GST has become applicable to the present unit and hence the liability has to be paid by the respondent alone.
- r. That the respondent cannot Club Charges as at present no club is constructed or functional, hence, in accordance with the settled legal principles in the absence of fully functional club, no club charges are payable hence, the same are required to be quashed.

- s. That the respondent has failed to perform their part of the contract although the complainants have performed their part of the contract in time bound manner.
- t. That because of the delay and latches and wrongful acts on the part of the respondent, the complainants is the only aggrieved party as the respondent is beneficiary party on all accounts. They have already coerced the complainants to pay a sum of Rs. 83,16,915/-. The respondent has not fulfilled its promises of handing over the possession of the flats as per the schedule mentioned in the agreement.
- u. That it is submitted that the respondent is not considering the loss accrued to the complainants on account of their faults. The complainants are entitled to receive the loss suffered due to default in completion of the project from the respondent as the aforesaid loss is directly connected due to the persistent and continuing deficiency in service on the part of the respondent. The complainants is entitled for interest on the deposited amount of Rs.83,16,915/- from 12.03.2017 till today and they are further entitled to the damages on account of harassment, mental agony, litigation charges which was initiated on account of fault of the respondent alone, along with compensation towards anger, anguish and frustration and sadness along with interest @ 18% per annum. The complainants are seeking delayed possession interest on their deposited amount till date along with compensation from the respondent.
- v. That such wilful negligence of the respondent caused deficiency in service thereby adopting unfair trade practice which constrained the complainants to seek redressal before the Court.

w. That for wilful latches and malafide action/ in-action, negligence of the respondent, the complainants have sustained much more physical and mental harassment on account of deficiency and unfair trade practice by respondent which can only be compensated by a sum of Rs. 8,00,000/- or more. The complainants are left with no alternative but to seek asylum of the Court for redressal of their grievances.

**C. Relief sought by the complainants:**

9. The complainants have sought following relief(s)
  - a. Direct the respondent to pay delayed possession charges.
  - b. Direct the respondent to quash all the illegal demands raised by the respondent on the account of PLC, increase in area, interest on delayed payments, club charges and arrears of previous demand as the same are in contravention of settled legal principles.
10. On the date of hearing, the authority explained to the respondent /promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent**

11. The respondent contested the complaint on the following grounds:
  - a. That the complainants after checking the veracity of the project approached the respondent and expressed their interest in booking a unit in the residential project developed by the respondent The Leaf, Sector 83, Village Sihi, Tehsil Manesar & District Gurugram, Haryana. The complainants' prior booking conducted extensive and independent enquiries with regard to the project through a real estate agent Property Junction Realtors Pvt. Ltd. and the complainants were fully satisfied about all aspects of the project and took an independent and informed decision, un-influenced in any manner by the respondent, to book the unit in question.

- b. That the complainants, in pursuance of the application form dated 10.09.2012, were allotted a unit bearing no. 4A, located on the building- 5, in the project. The complainants consciously and willfully opted for a down payment plan for remittance of the sale consideration for the unit in question and further represented to the respondent that they will remit every instalment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainants and proceeded to allot the unit in question in their favour.
- c. That after fulfilling certain documentation and procedures the allotment letter was issued dated 19.09.2012 in favour of the complainants allotting unit no. 4A in building-5, admeasuring 2280 sq. ft. Thereafter, immediately on 12.12.2013, the buyer agreement was executed between the parties which contained the final understandings between the parties stipulating all the rights and obligations.
- d. That the complainants have no cause of action to file the present complaint as the same 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. The complainants are investor and have booked the unit in question to yield gainful returns by selling the same in the open market. However, due to the ongoing slump in the real estate market, the complainants have filed the present purported complaint to wriggle out of the agreement. Moreover, the complainants themselves have delayed the payment towards the instalment of the unit and only cleared the payment towards the instalment of the unit and only cleared the payments after continuous efforts made by the respondent after sending numerous reminder and demand letters.



- e. That the complainants have never paid their outstanding dues post 2017 even after continuous reminders and demand letters sent from time to time. The respondent was always on time in raising the construction of the project and moreover, the complainants as per the terms and conditions of the buyer agreement opted for a construction linked payment plan for remittance of the sale consideration for the unit in question and further represented to the respondent that they shall remit every installment on time as per the payment schedule. The respondent sent demand letters dated 04.08.2017, 14.10.2017, 17.11.2017, 24.07.2018, 09.03.2019, 15.06.2021, 28.08.2021 and 07.09.2021 to the complainants to which the latter paid no heed and never paid a single penny since 2017.
- f. That the respondents in good faith even issued a possession letter to the complainants dated 07.09.2021 despite the fact that the complainants failed to clear the outstanding dues accruing since 2017. The complainants are habitual defaulters who had to be reminded on numerous occasions to pay their instalments/dues vide various reminder/demand letters. The tower which contains the complainants' unit is already completed and the respondent has obtained the occupational certificate of the same.
- g. That the construction of the project was stopped on account of the NGT order prohibiting construction activity of any kind in the entire NCR by any person, private or government authority. Vide order dated 20.07.2016 NGT placed sudden ban on the entry of diesel trucks more than ten years old and said that no vehicle from outside or within Delhi would be permitted to transport any construction material. Since the construction activity was suddenly stopped, after the lifting of the ban it took some time for mobilization of the work by various agencies employed with the respondent.

- h. That the possession of the unit as per clause 8.1 of the buyer agreement was to be handed over within 36 months (plus the grace period of 90 days i.e. 3 months) from the date of the execution of the buyer agreement and not from the date of terms and conditions as stated by the complainant who is trying to confuse the Authority with his false, frivolous and moonshine contentions. The date of the completion of the project therefore comes out to be 12.03.2017. In addition to this, the date of possession as per the buyers' agreement further increased to grace months of 3 months. The date of the completion of the project was further pushed due to the force majeure conditions i.e. due to various reasons beyond the control of the respondent which directly affected the execution of the project. Demonetization and GST resulted in a serious economic meltdown and sluggishness in the real estate sector. The respondent, with no cash circulation in the market the respondent could not make timely payments to the labourers and the contractors which stalled the construction. Further, the NGT vide its order dated 09.11.2017 a complete ban on construction activities in around Delhi-NCR which further caused serious damage to the project. Despite the various challenges the respondent is trying his level best to complete the said project well within the timeline as declared during the time of registration.
- i. That the current covid-19 pandemic resulted in serious challenges to the project with no available labourers, contractors etc. for the construction of the project. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020 bearing no. 40-3/2020-DM-I(A) recognised that India was threatened with the spread of Covid-19 pandemic and ordered a complete lockdown in the entire country for an initial period of 21 days which started on March 25,2020. Pursuant to the issuance of advisory by the GOI vide

office memorandum dated May 13, 2020 regarding extension of registrations of real estate projects under the provisions of the RERA Act, 2016 due to "Force Majeure", the Haryana Real Estate Regulatory Authority has also extended the registration and completion date by 6 months for all real estate projects whose registration or completion date expired and or was supposed to expire on or after March 25, 2020.

- j. That the complainants have also misrepresented that no updates regarding the status of the project were provided to them by the respondent. The complainants were constantly provided construction updates by the respondent from time to time and was well aware of the force majeure conditions prevailed during the course of time which led in delaying the completion of the said project. Several allottees, have defaulted in timely remittance of payment of installments which was an essential, crucial and an indispensable requirement for conceptualisation and development of the project in question. Despite there being a number of defaulters in the project, the respondent itself infused huge amount of funds into the project and had diligently developed the project in question.
- k. That the project at present has already been completed and the respondent have further obtained the occupational certificate from the competent authorities therefore, it would be difficult for the respondent to pay any interest on the delayed possession at this stage as the entire amount has been used to raise the construction of the project. At this point, the project is complete and any relief cannot be given to the complainants as it would be detrimental to the interest of the respondent as well as all the other investors who have invested in the project.
- l. That the compensation in the form of interest on delayed possession to be paid by the respondent to the complainants at this crucial juncture would



bring a bad name to the goodwill of the entire company and will create a bad precedent which would eventually lead to an array of similarly filed frivolous and vexatious complaints asking for a similar relief, leaving the Respondent without any funds to carry on the completion of the project and would further go bankrupt. The Respondent itself has infused huge sum of funds into the project so that the project could be completed on time. Despite force majeure conditions the respondent has made all the efforts in order to complete the project in time.

- m. Further, the complainants have also concealed from the Authority that the respondent being a customer centric company has always addressed the concerns of the complainants and had requested the complainants telephonically time and again to visit the office of the Respondent to amicably resolve the concerns of the complainants.
- n. That the respondents had from time to time obtained various licenses and approvals and sanctions along with permits. Evidently respondent had to obtain all licenses and permits in time before starting construction. Furthermore, after the introduction of the Authority, Gurgaon the respondent applied for the approval of the same which was granted and approved after paying the composite fee by the respondent.
- o. That it is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainants are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.
- p. Furthermore, the complainants are attempting to raise issues at a belated stage, attempting to seek modification in the agreement entered into between the parties in order to acquire benefits for which the complainants are not entitled in the least. In addition, the issues raised in the present

complaint by the complainants are not only baseless but also demonstrates an attempt to arm twist the answering respondent into succumbing to the pressure so created by the complainants in filing this frivolous complaint before the Authority and seeking the reliefs which the complainants is not entitled to.

12. All the other averments made in the complaint were denied in toto.
13. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the parties.

#### **E. Jurisdiction of the authority**

14. 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**

15. 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**

16. 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 allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

**Section 34-Functions of the Authority:**

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

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

**F. Findings on the objections raised by the respondent:**

**F.1 Objection regarding the complainants being investors.**

18. The respondent has taken a stand that the complainants are the investors and not consumers, therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondents also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observed that the respondents are correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. 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.*

19. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainants, it is crystal clear that the complainants are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred 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 promoter that the allottee being an investor is not entitled to protection of this Act also stands rejected.

**F.II Objection regarding delay in completion of construction of project due to force majeure conditions.**

20. The respondent-promoter alleged that grace period on account of force majeure conditions be allowed to it. It raised the contention that the construction of the project was delayed due to force majeure conditions such as demonetization, and the orders of the Hon'ble NGT prohibiting construction in and around Delhi and the Covid-19, pandemic among others, but all the pleas advanced in this regard are devoid of merit. The flat buyer's agreement was executed between the parties on 12.12.2013 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 12.03.2017. The events such as and various orders by NGT in view of weather condition of Delhi NCR region, were for a shorter duration of time and were not continuous. Hence, in view of



aforesaid circumstances, no period grace period can be allowed to the respondent/builder. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of some of the allottees. Thus, the promoter-respondent cannot be granted any leniency for aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrongs.

21. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as ***M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M. P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020*** dated 29.05.2020 has observed that:

*"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."*

22. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 12.03.2017 and is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the Authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

#### **G. Findings on the relief sought by the complainants**

##### **G.I Direct the respondent to pay delayed possession charges/interest**



23. In the present complaint, the complainant(s) intend to continue with the project and are seeking possession of the subject unit and delay possession charges as provided under the provisions of section 18(1) of the Act which 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 8 of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

*"8.1 (a) subject to terms of this clause and subject to the flat buyer(s) 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 complied with all provisions, formalities, documentation etc. as prescribed by the developer, the developer proposes to handover the possession of the flat within a period of thirty-six months from the date of signing of this agreement. However, this period will automatically stand extended for the time taken in getting the building plans sanctioned. The flat buyer(s) agrees and understands that the developer shall be entitled to a grace period of 90 days, after the expiry of thirty-six months or such extended period, for applying and obtaining occupation certificate in respect of the Group Housing Complex.."*

25. The Authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set 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 provision of this agreement and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is 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 date for handing over possession loses its meaning.

26. **Admissibility of grace period:** The respondent promoter has proposed to handover the possession of the unit within a period of 36 months from the date of signing of the agreement. In the present case, the promoter is seeking 90 days as grace period for applying and obtaining occupation certificate. The Authority relying on the judgement of the *Hon'ble Appellate Tribunal in appeal no. 433 of 2022 tilted 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 90 days for applying and obtaining the occupation certificate. The relevant para of the above-mentioned judgement is reproduced below:

*As per section 18 of the Act, if the project of the promoter is delayed and if the allottee wishes to withdraw then he has the option to withdraw from the project and seek refund of the amount or if the allottee does not intend to withdraw from the project and wishes to continue with the project, the allottee is to be paid interest by the promoter for each month of the delay. In our opinion if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. So, in view of the above said circumstances, the appellant-promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the Occupation Certificate*

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 the grace period so provided in the agreement for applying and obtaining the occupation certificate. Thus, the due date of handing over of possession comes out to be 12.03.2017.
28. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. 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]***

*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, *ibid*, 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., 20.08.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
31. The definition of term ‘interest’ as defined under section 2(z a) 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—*

*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 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., 11.10 % by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
33. On consideration of the documents available on record and submissions made by both the parties, 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 8 of the agreement, the possession of the subject apartment was to be delivered within 36 months from the date of execution of agreement. For the reasons quoted above, the due date of possession is to be calculated from the date of execution of buyer's agreement i.e., 12.12.2013. Therefore, the due date of possession is calculated from the date of execution of buyer's agreement and the said time period of 36 months expired on 12.12.2016. As far as grace period of 90 days is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 12.03.2017.
34. The respondent has obtained the occupation certificate on 24.08.2021. Copies of the same have been 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 allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 12.12.2013 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 12.12.2013 to hand over the possession within the stipulated period.

35. 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 24.08.2021. The respondent offered the possession of the unit in question to the complainants only on 07.09.2021. So, it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. This 2 month of reasonable time is being given to the complainants 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. 12.03.2017 till the date of offer of possession (07.09.2021) plus two months i.e., 07.11.2021.
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 complainants are entitled to delay possession charges at rate of the prescribed interest @ 11.10% p.a. w.e.f. 12.03.2017 till the date of offer of possession (07.09.2021) plus two months i.e., 07.11.2021; as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

**G.II Direct the respondent to quash the illegal demands on account of PLC, increase in area, interest on delayed payments, club charges and arrears of previous demand as the same are in contravention of settled legal principles.**

- **PLC**

37. The complainant has contended that the respondent has unreasonably charges preferential location charges of Rs. 3,90,0000/- i.e., without any prior intimation to them whereas the location of the said unit is at the end corner which is not a preferential location.
38. The complainant has sought to waive of the unreasonable preferential location charges of Rs. 3,90,000/- the amount taken under the head of preferential location. It was pleaded by the complainant that he is not liable to pay that amount to the respondent charged illegally. However, the amount detailed above has been charged as per terms & conditions of BBA and payment plan signed by the complainant.
39. It is not the case of complainants that they did not agree to pay PLC or the terms and conditions as agreed upon were not adhered to by the respondent. Even while signing agreement dated 12.12.2013, the complainants were informed about the liability to pay those charges. So, now he cannot wriggle out from that commitment and take a plea that he is not liable to any amount on account of PLC.

- **Increased in area**

40. The complainants states that there is a unilateral increase in super area of the said unit and was increased from 2600 sq. ft. to 2812 sq. ft. vide offer of possession dated 07.09.2021. The respondent in its defence submitted that increase in super area was duly agreed by the complainant at the time of agreement and the same was incorporated in the buyer agreement. Relevant clause of the agreement is reproduced hereunder:

*1.2(d)*

*"It is made clear that the super area of the Flat as defined in Annexure -II is tentative and subject to change till the construction of the 'Group Housing Complex' is complete. The Sale Price payable shall be recalculated upon*

*confirmation by the Developer of the final super area of the said FLAT and any increase or reduction in the super area of the said FLAT shall be payable or refundable, without any interest, at the same rate per square feet as agreed herein above. If there shall be an increase in super area, the Flat Buyer(s) agrees and undertakes to pay for the increase in super area immediately on demand by the Developer and if there shall be a reduction in the super area, then the refundable amount due to the Flat Buyer(s) shall be adjusted by the Developer from the final instalment as set forth in the schedule of payments appended in Annexure I.*

41. Furthermore, clause 7.2 states that if the alteration in size of the unit is in excess of 10%, then the developer shall obtain the written consent of the allottee. The said clause is reproduced below:

*In case of any major alteration/modification resulting in excess of 10% change in the super area of the Flat in the sole opinion of the Developer any time prior to and upon the grant of occupation certificate, the Developer shall intimate the Flat Buyer(s) in writing the changes thereof and the resultant change, if any, in the Sale Price of the Flat to be paid by him/her and the Flat Buyer(s) agrees to deliver to the Developer in writing his/her/their consent or objections to the changes within thirty (30) days from the date of dispatch by the Developer of such notice failing which the Flat Buyer(s) shall be deemed to have given his/ her/ their full consent to all such alterations/modifications and for payments, if any, to be paid in consequence thereof. If the written notice of the Flat Buyer(s) is received by the Developer within thirty (30) days of intimation in writing by the Developer indicating his/ her/ their non-consent/objections to such alterations/modifications as intimated by the Developer to the Flat Buyer(s), then in such case alone this Agreement shall be cancelled without further notice and the Developer shall refund the money received from the Flat Buyer(s) within sixty (60) days from the date of intimation received by the Developer from the Flat Buyer(s). On payment of the money after making deductions as stated above the Developer shall be released and discharged from all its obligations and liabilities under this Agreement. In such a situation, the Developer shall have an absolute and unfettered right to allot, transfer, sell and assign the Flat and all attendant rights and liabilities to a third party. It being specifically agreed that irrespective of any outstanding amount payable by the Developer to the Flat Buyer(s), the Flat Buyer(s) shall have no right, lien or charge on the Flat in respect of which refund as contemplated by this clause is payable.*

42. Considering combined reading of both the aforesaid clauses, the authority observes that the respondent has increased the super area of the flat from 2600 sq. ft. to 2812 sq. ft. vide offer of possession dated 07.09.2021 with increase in area of 65 sq. ft. i.e. below 10%. Therefore, the demand raised is also valid. Hence, the complainants are duty-bound to pay the same.

- GST.



43. The counsel for the complainant submitted that GST came into force on 01.07.2017 and the possession was supposed to be delivered by 12.03.2017. Therefore, the tax which came into existence after the due date of possession and this extra cost should not be levied on the complainant. The authority has decided this issue in the complaint bearing no. **1228 of 2021** titled as **Vineet Umesh Gupta Vs. M/s BPTP Limited & M/s Countrywide Promoters Pvt. Ltd.** wherein the authority has held that for the projects where the due date of possession was prior to 01.07.2017 (date of coming into force of GST), the respondent/promoter shall bear the difference in amount of VAT charges and GST the liability of as GST had not become due up to the due date of possession as per the buyer's agreements.

- **Club charges.**

44. Perusal of case file itself reveals that club membership charges amounting to Rs.1,00,000/- were payable by the complainants. This understanding was explicitly agreed upon between the parties as specified in clause 1.2(a) the apartment buyer agreement. However, the Authority in **Complaint Case no. 4031 of 2019** titled as **"Varun Gupta vs Emaar MGF Land Limited"** decided on **12.08.2021**, had already decided that if the club has come into existence and the same is operational or is likely to become operational soon, i.e., within reasonable period of around 6 months, the demand raised by the respondent for the said amenity shall be discharged by the complainants as per the terms and conditions stipulated in the builder buyer's agreement. However, if the club building is yet to be constructed, the respondent should prepare a plan for completion of the club and demand money regarding club charges and its membership from the allottees only after completion of the club.

#### H. Directions of the authority



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

- i. The respondent is directed to pay interest to the complainants against the paid-up amount at the prescribed rate i.e., 11.10% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 12.03.2017 till 07.11.2021 i.e., expiry of 2 months from the date of offer of possession (07.09.2021) or till actual handover of possession whichever is earlier as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act.
- ii. The arrears of such interest accrued from due date of possession till its admissibility as per direction (i) above shall be paid by the promoters to the allottee within a period of 90 days from date of this order as per rule 16(2) of the rules.
- iii. The respondent is directed to issue a revised account statement after adjustment of delayed possession charges as per above within 30 days and thereafter the complainants are directed to pay outstanding dues, if any, within next 30 days and the respondent shall handover the physical possession of the allotted unit in terms of Section 19(10), 2016 Act within 30 days from date of this order.
- iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.



- v. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- vi. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.
47. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
48. Complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
49. File be consigned to the registry.

(Ashok Sangwan)  
Member

(Arun Kumar)  
Chairman

(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 20.08.2024