

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

Complaint no.	:	2770 of 2021
Date of filing complaint:		14.07.2021
Date of order	:	13.08.2024

1. Col Kanwar Ripu Sain Jaswal 2. Mehak Jaswal R/o: H.no.B1-17 First Floor DLF Valley, Sector - 3 Pinjore Kalka Urban Complex Panchkula - 134105	Complainants
Versus	
M/S Emaar India Ltd. Regd. Office: Emaar MGF Business Park, MG Road, Sikanderpur Chowk, Sector - 28, Gurugram	Respondent

CORAM:	
Shri Arun Kumar	Chairman
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member

APPEARANCE:	
Sh. Kanish Bangia (Advocate)	Complainants
Sh. Ishaan 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 (ins 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 allottee 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 complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	Emerald Floors Premier, Sector 65, Gurugram, Haryana
2.	Total area of the project	25.49 acres
3.	Nature of the project	Group housing colony
4.	DTCP License no. & validity status	06 of 2008 dated 17.01.2008 upto 16.01.2025
5.	Name of Licensee	Active Promoters Pvt. Ltd. and 2 others
6.	RERA Registered / not registered	Registered vide no. 162 of 2017 dated 29.08.2017 (For 55.962 acres)
7.	RERA registration valid up to	28.08.2022
8.	Unit no.	EFP-04-0102, 1 st floor [page 66 of complaint]
9.	Area of the unit (super area)	1650 sq. ft. [page 66 of complaint]
10.	Buyer's agreement executed between the original allottee (Remy Sethi) and the respondent on	27.01.2010 [page 69 of reply]
11.	Possession clause	11. POSSESSION

		<p>(a) Time of handing over the Possession</p> <p><i>Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 36 months from the date of execution of buyer's agreement. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of three months, for applying and obtaining the completion certificate/ occupation certificate in respect of the Unit and/or the Project.</i></p> <p style="text-align: right;">(emphasis supplied)</p> <p>[page 84 of reply]</p>
12.	Due date of possession	27.04.2013 (Calculated 36 months from the date of execution of buyer's agreement plus three months grace period)
13.	Complainants are subsequent allottees	In pursuance of Sale Agreement -dated 08.03.2011 (page 125 of reply) executed between the complainants and the original allottee, the complainants' name were endorsed in the buyer's agreement in terms of affidavit dated 08.03.2011. Thereafter, the respondent has issued nomination letter in favour of the complainant no.1 on 24.03.2011 (Page 146 of reply). Note: The name of complainant no.2 was added as co-allottee vide letter dated 28.08.2020 as per page 133 of reply
14.	Total consideration	Rs.72,19,387/- (as per the SOA dated 14.07.2021 at page 123 of reply)

15.	Total amount paid by the complainant no. 1	Rs.72,26,135/- (as per SOA dated 14.07.2021 at page 123 of reply)
16.	Occupation certificate on	05.03.2019 [page 51 of reply]
17.	Offer of possession to complainant no.1	13.02.2020 [Page 167 of reply]
18.	Unit handover letter dated to both the complainants	18.09.2020 [page 174 of reply]
19.	Conveyance deed executed on	30.10.2020 [Page 178 of reply]
20.	Delay compensation paid by the respondent in terms of the buyer's agreement	Rs. 9,67,542/- (Rs. 6,73,471/- + Rs. 2,94,071/-) (as per SOA dated 14.07.2021 at page 123 of reply)

B. Facts of the complaint:

3. The complainants have made the following submissions in the complaint:
 - i. That in the year 2009, the respondent company issued an advertisement announcing a group housing colony project called 'Emerald Estate Apartments' situated at Sector 65, Gurugram, Haryana, where the original allottee paid an amount of Rs.5,00,000/- dated 08.10.2009 and was acknowledged by the respondent vide statement of account dated 29.05.2021 and accordingly filled the application form for one flat/unit and opted for lump sum payment plan. The original allottee was allotted one unit bearing no. EFP-04-0102 in the above said project.



- ii. That the original allottee made two payments of Rs.1,50,000/-, Rs.4,50,000/- vide cheque no. 177224 and 109167 dated 19.11.2009 and lump sum payment of Rs.54,60,074/- vide cheque no.383258 dated 02.12.2009 which was acknowledged by the respondent vide statement of account dated 29.05.2021 and the original allottee .e., Mrs. Remy Sethi received allotment letter on 25.11.2009 .The respondent executed the builder buyer agreement dated 27.01.2010 after taking more than 70% of the basic sale price of the unit entrapping the original allottee in the web of lies and false promises.
- iii. That the complainants executed a nomination letter dated 24.03.2011 allotting the said unit no.EFP-04-0102 from the original allottee i.e., Ms. Remy Sethi. The complainants made a payment of HVAT of Rs. 68,881/- which was acknowledged by the respondent vide statement of account dated 29.05. 2021.The respondent have credited an amount of Rs. 5,953.00 and Rs. 11,949/- on the account of anti-profiting, which was acknowledged by the respondent.
- iv. That the complainants have received two payments of Rs.6,73,471/- and of Rs.2,581.00 dated 13.02.2020 respectively on account of delay compensation on IOP and EPR, which was acknowledged by the respondent vide statement of account dated 29.05.2021. The respondent has credited an amount of Rs. 24,682.00 dated 13.02.2020, which was acknowledged by the respondent vide statement of account dated 29.05.2019.
- v. That the complainants received the letter of offer of possession on 13.02.2020 in which they have annexed a list of additional payments to be made before taking delivery of the unit. The complainants received an indemnity-cum-undertaking dated 05.03.2020 for the possession of their unit no. EFP-04-102. The respondent have credited



an amount of Rs.2,94,071.00, dated 02.04.2020 respectively on account of delay compensation on IOP, which was acknowledged by the respondent vide statement of account dated 29.05.2021. The statement of accounts reflects the CAM adjustment of Rs.69,300.00, dated 14.04.2020 which was acknowledged by the respondent vide statement of account dated 29.05.2021 and an adjustment of Rs.5,900.00, dated 06.07.2020 which was acknowledged by the respondent vide statement of account dated 29.05. 2021.

- vi. That the complainants received an allotment letter dated 28.08.2020. For the unit no. EEP-04-102 for the name addition of the co-applicant. The complainants received a unit handover letter on 18.9.2020. The statement of account reflects the collection adjustment of Rs. 5,900.00, dated: 06.07.2020 which was acknowledged by the respondent vide statement of account dated 29.05.2021.
- vii. That the complainants received a conveyance deed on 30.10.2020. The respondent asking for interest free maintenance security as the maintenance security is also illegal and amounts to unjust enrichment depriving the complainants of a huge loss of interest on a sum of Rs. 82,500/- which condition was never a part of the buyer agreement.
- viii. The complainants kept pursuing the matter with the representatives of the respondent as to when will they deliver the project and why construction is going on at such a slow pace, but to no avail.

C. Relief sought by the complainant:

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

- I. Direct the respondent to pay delayed possession charges on the entire amount paid from due date of possession till actual possession is delivered.

- II. Direct the respondent to remit back the amount charged on account of fixed deposit of HVAT, advance monthly maintenance charges for a period of 12 months and interest free maintenance security.
- III. Direct the respondent to not to ask for any charges which is not as per the buyer agreement.

D. Reply by respondent:

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

- i. That the present complaint is not maintainable in law or on facts. The provisions of the Real Estate (Regulation and Development) Act, 2016 are not applicable to the project in question. The application for issuance of occupation certificate in respect of the project in question was made on 29.06.2017, i.e. well before the notification of the Haryana Real Estate Regulation and Development Rules 2017. The occupation certificate has been thereafter issued on 05.03.2019. Thus, the project in question Emerald Plaza, Sector 65, Gurgaon is not an 'Ongoing Project' under Rule 2(1)(o) of the Rules.
- ii. That the complainants are not an "Allottee" but an investor who have booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale. The apartment in question has been booked by the complainants as a speculative investment and not for the purpose of self-use as a residence.
- iii. That the original allottee i.e., Ms. Remy Sethi had booked the unit in question, bearing number EFP-04-0102, in the project "Emerald Floors Premier", Sector 65, Gurugram, Haryana vide application form dated 07.10.2009 and Subsequently, parties executed a buyer's agreement dated 27.01.2010.

- iv. That the original allottee Ms. Remy Sethi had defaulted in terms and conditions of the buyer's agreement by doing default in timely remittance of the amounts due and payable by her to the respondent which was an indispensable requirement under the buyer's agreement. Somewhere in the year 2011, complainant no.1 approached the original allottee for purchasing her rights and title in the unit in question. The original allottee acceded to the request of the complainant no.1 and agreed to transfer and convey her rights, entitlement and title in the unit in question in their favour. An agreement to sell dated 08.03.2011 was executed by the original allottee with the complainant no.1. It needs to be highlighted that the respondent, at the time of endorsement of the unit in question in favour of the complainants, had specifically indicated to complainant no.1 that being the assignee/nominee of the original allottee and having purchased the unit in question in resale, he would not be entitled to any compensation for delay, if any, in delivery of possession of the unit in question. It was conveyed to complainant no. 1 that the original allottee had defaulted in timely remittance of the sale consideration and has, consequently, disentitled herself from any compensation. The said position was duly accepted and acknowledged by complainant no.1. The complainant no.2 had been added as a co-allottee on account of natural love and affection. No right, title or interest can be asserted by complainant no.2 against the respondent which cannot be claimed by complainant no.1. Vide nomination letter dated 28.08.2020 issued by the respondent.
- v. That as per clause 11 of the buyer's agreement dated 27.01.2010 the time period for delivery of possession was 36 months along with grace period of 3 months from the date of execution of the buyer's

agreement subject to the allottee(s) having strictly complied with all terms and conditions of the buyer's agreement and not being in default of any provision of the buyer's agreement including remittance of all amounts due and payable by the allottee(s) under the agreement as per the schedule of payment incorporated in the buyer's agreement. The complainants have completely misconstrued, misinterpreted and miscalculated the time period as determined in the buyer's agreement. It is pertinent to mention that it was categorically provided in clause 11(b)(iv) that in case of any default/delay by the allottees in payment as per schedule of payment incorporated in the buyer's agreement, the date of handing over of possession shall be extended accordingly, solely on the respondent's discretion till the payment of all outstanding amounts to the satisfaction of the respondent.

- vi. That without prejudice to the contentions of the respondent, it is submitted that the present complaint is barred by limitation. The complainants have alleged that the possession of the unit was to be given not later than 2013 and therefore cause of action, if any, accrued in favour of the complainants in 2013. Thus, the complaint seeking interest as a form of indemnification for the alleged delay is barred by limitation.
- vii. That without admitting or acknowledging in any manner the truth or legality of the allegations levelled by the complainants and without prejudice to the contentions of the respondent, it is submitted that the project has got delayed on account of the following reasons which were/are beyond the power and control of the respondent:

I. Second staircase issue:

- a) The building plans for the apartment/tower in question was approved by the competent authority under the then applicable

- National Building Code in terms of which buildings having height of 15mtrs or above but having area of less than 500 sq mtrs on each floor, were being approved by the competent authorities with a single staircase and construction was being carried out accordingly.
- b) Subsequently, the National Building Code (NBC) was revised in the year 2016 and in terms of the same, all high rise buildings (i.e buildings having height of 15 mtrs. and above), irrespective of the area of each floor, are now required to have two stair cases.
- c) Furthermore, it was notified vide Gazette published on 15.03.2017 that the provisions of NBC 2016 supersedes those of NBC 2005. Notification dated 15.03.2017
- d) The fire department is seeking to retrospectively apply the said provision and while processing the Fire NOC application has been insisting on two stair cases in all high rise buildings even in cases where the building plans stood approved with a provision for a single staircase and which have been constructed accordingly. The fire department has issued a provisional Fire NOC with the requirement that the second staircase would be constructed by the developer within one year from the date of issuance of the provisional Fire NOC.
- e) In view of the practical difficulties in constructing a second staircase in a building that already stands constructed according to duly approved plans, the respondent made several representations to various Government Authorities requesting that the requirement of a second staircase in such cases be dispensed with. It was pointed out by the respondent that construction of a second stair case would not be possible for several technical reasons such as obstruction of Fire tender path, violation of the set back norms,

violation of fire safety norms in as much as the second staircase would not be connected to the common lobby area and that construction of second staircase by connecting balconies of the dwelling units would pose a security and privacy concern. The respondent had also pointed out that the allottees of the dwelling units were also eagerly awaiting possession of their units since long and requested that the Fire NOC be issued without any pre conditions.

- f) The fire department inspected the site of the project and sought alternate proposals from the respondent to meet the requirement of second staircase in the buildings in question. The respondent accordingly submitted various proposals to the Fire Department.
- g) Eventually, so as not to cause any further delay in the project and so as to avoid jeopardising the safety of the occupants of the buildings in question including the building in which the apartment in question is situated, The respondent has taken a decision to go ahead and construct the second staircase. In fact, the respondent has completed the construction thereof and obtained the occupation certificate on 05.03.2019.

II. Defaults of Contractor:

- a) That a contract dated 01.11.2010 was executed between the respondent and M/s B L Kashyap and sons (BLK/Contractor) in terms of which the contractor was to construct residential projects being developed by the respondent in the name and style of "Emerald Estate" and "Emerald Floors Premier", including civil, structure, finishing, MEP, external development, infrastructure, horticulture, EWS, clubhouses, swimming pools, convenience shopping etc. The start date of the project as

determined by the parties was 26 July 2010 and the scheduled date of completion of the project was 25 July 2013.

- b) That the contractor was not able to meet the agreed timelines for construction of the project. The progress of work at the project site was extremely slow on account of various defaults on the part of the contractor, such as failure to deploy adequate manpower, shortage of materials etc. in this regard, the respondent made several requests to the contractor to expedite progress of the work at the project site. However, the contractor did not adhere to the said requests and the work at the site came to a standstill.
- c) That in the aforesaid circumstances, the respondent was constrained to issue Notice of Termination dated 16.01.2015, terminating the contract and calling upon the contractor to remove itself from the project site without removal/ damage to the materials, equipments, tools, plant & machinery, and to hand over the contract documents.
- d) That the respondent apprehended that the contractor would remove from the project site, material, tools, plant & machinery which would then not be available to the respondent for use for completion of the project in terms of clause 95.1 (GCC) of the contract. Therefore, the respondent filed a petition bearing no. O.M.P. No. 100 of 2015 under Section 9 of the Arbitration and Conciliation Act, 1996 before this Hon'ble High Court seeking urgent reliefs in the nature of restraining the contractor from interfering with the business activities of the petitioner at the project site, removing any material, equipment, tools, plant & machinery from the project site and appointing a local

commissioner to inspect the project site and prepare an inventory of material, equipment, tools, plant & machinery.

- e) However, the parties settled the disputes during the pendency of the aforesaid proceedings and the contractor assured the respondent that the project shall be completed within the decided timeline. This was considered to be in the interest of the project as well as to mitigate losses, since considerable time would have been spent in re-tendering of the works. Further, the contractor had also undertaken to complete the project within the agreed timelines i.e. within eighteen (18) months.
- f) That in spite of the aforementioned settlement between the respondent and the contractor, and with the contractor's assurances that the project will be finished within the agreed timeline, the contractor did not amend its ways, and persistently defaulted in meeting the agreed timelines for completion of the project.
- g) That in the meanwhile, the National Building Code (NBC) was revised in the year 2016 and in terms of the same, all high rise buildings (i.e buildings having height of 15 mtrs and above), irrespective of the area of each floor, are now required to have two stair cases. Furthermore, it was notified vide Gazette published on 15.03.2017 that the provisions of NBC 2016 supersedes those of NBC 2005. The respondent had accordingly sent representations to various authorities identifying the problems in constructing a second staircase. Eventually, so as to not cause any further delay in the project and so as to avoid jeopardising the safety of the occupants of the buildings in question, the respondent had taken a decision to go ahead and

construct the second staircase. However, due to the impending contractor i.e., BL Kashyap issue of non-performance, the construction of the second staircase could not be started as well.

- h) That in view of the above, the respondent was constrained to terminate the contract with the contractor vide termination notice dated 30.8.2018. After termination of the contract, the respondent filed a petition against the contractor before the Hon'ble Delhi High Court seeking interim protection against the contractor so that the contractor does not, inter alia, disturb the possession and work at the site. Similar petition was also filed by the contractor against the respondent.
- i) That the aforesaid two petitions, along with two other petitions pertaining to a different contract came up for hearing on 6th of September 2018. The Hon'ble High Court by order dated 6th of September 2018 disposed of the said cases and issued several directions. The Hon'ble High Court appointed Justice A P Shah (Retd) as the Sole Arbitrator for adjudication of disputes between the respondent and the contractor. Furthermore, RITES Ltd (a Government Undertaking) was appointed as the Local Commissioner to inter alia, inspect and take joint measurement of work done and balance to be done and file its report before the Sole Arbitrator. The High Court gave liberty to the respondent to award the contract to new agency (ies) for completing the remaining work. However, it was directed that the project site shall be handed over to such new agency with the permission of the Sole Arbitrator.
- j) That the arbitration proceedings titled as B L Kashyap and Sons Vs Emaar MGF Land Ltd (arbitration case number 1 of 2018)

before Justice A P Shah (Retd), Sole Arbitrator have been initiated.

The hon'ble Arbitrator vide order dated 27.04.2019 gave liberty to the Respondent to appoint another contractor w.e.f. 15.05.2019.

- viii. That it needs to be highlighted that the respondent had applied to the statutory authority for grant of occupation certificate in respect of the tower in which the unit in question is located was applied on 29.06.2017 and the same was granted on 05.03.2019. The complainants were offered possession of the unit in question through letter of offer of possession dated 13.02.2020. The complainants were called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit in question to them. However, the complainants consciously refrained from obtaining possession of the unit in question for reasons best known to them.
- ix. That after needlessly delaying the matter, the complainants approached the respondent requesting it to deliver the possession of the unit in question. A unit handover letter dated 18.09.2020 was executed by the complainants, specifically and expressly agreeing that the liabilities and obligations of the respondent as enumerated in the allotment letter or the buyer's agreement stand satisfied.
- x. That it is pertinent to mention that after execution of the unit handover letter dated 18.09.2020 and obtaining of possession of the unit in question, the complainants are left with no right, entitlement or claim against the respondent. It needs to be highlighted that the complainants have further executed a conveyance deed bearing on 30.10.2020 in respect of the unit in question. The transaction between

the complainants and the respondent stands concluded and no right or liability can be asserted by the respondent or the complainant against the other. The instant complaint is a gross misuse of process of law.

xi. That clause 18 of the buyer's agreement provides that the complainants are liable to pay IFMS. Clause 18(h) of the buyer's agreement specifically provides that the allottees are liable to pay maintenance charges at the time of offer of possession.

xii. That it is submitted that the reliefs sought by the complainants cannot be granted in contravention of the conveyance deed and indemnity cum undertaking executed by the complainants. The complainants have omitted to impugn the said conveyance deed and the indemnity cum undertaking mentioned hereinabove. In absence of any challenge to the legality and validity of the aforesaid documents, the complaint preferred by the complainants is not legally maintainable. The instant complaint is, therefore, liable to be dismissed at the threshold.

xiii. That it needs to be highlighted that the respondent has paid an amount of Rs.17,902/- as benefit on account of Anti-Profiting and Rs. 2,581/- on account of early payment rebate. Furthermore, an amount of Rs.9,67,542/- has been credited by the respondent to the account of the complainants as a gesture of goodwill.

6. All other averments made in the complaint were denied in toto.

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

E. Jurisdiction of the authority:

8. 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

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

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 promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

9. 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.I Objection regarding the respondent has made an application for grant of occupation certificate before coming into force of RERA.

10. The respondent-promoter has raised the contention that the provisions of the Act of 2016, are not applicable to the project as the respondent has already applied for obtaining occupation certificate from the competent authority on 29.06.2017 i.e., before the notification of the Act and the rules made thereunder. As per proviso to section 3 of Act of 2016, ongoing projects on the date of commencement of this Act i.e., 01.05.2017 and for which completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of three months from the date of commencement of this Act and the relevant part of the Act is reproduced hereunder: -

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:

11. The legislation is very clear in this aspect that a project shall be regarded as “ongoing project” until receipt of completion certificate. Since, no completion certificate was obtained by the promoter-builder with regards to the concerned project, the plea advanced by it is hereby rejected.

F.II Objection regarding maintainability of complaint on account of complainants being investor.

12. The respondent took a stand that the complainants are 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 complainants are buyer's, and complainant no.1 has paid a total price of Rs.72,26,135/- 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;"

13. 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 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 to in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of the promoter that the allottee being investor are not entitled to protection of this Act also stands rejected.

F. III Whether the complainants are entitled for delay possession charges after execution of conveyance deed

14. The respondent stated that the complainants have alleged that the possession of the unit was to be given not later than 2013 and therefore cause of action, if any, accrued in favour of the complainants in 2013. The

counsel for the respondent also stated at bar that the conveyance deed of the unit has already been executed in favour of the complainants on 30.10.2020. The transaction between the parties stands concluded upon the execution of conveyance deed.

15. 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 complainants against the other. Therefore, the complainants are estopped from claiming any interest in the facts and circumstances of the case.
16. 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.
17. 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.

18. 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. The essence and purpose of the Act was to curb the menace created by the developer/promoter and safeguard the interests of the allottees by protecting them from being exploited by the dominant position of the developer which he thrusts on the innocent allottees. 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."*

19. 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.
20. After consideration of all the facts and circumstances, the authority holds that even after execution of the conveyance deed, the complainants allottees cannot be precluded from his right to seek delay possession charges from the respondent-promoter.

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

21. 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. However, this shall not apply to the provisions of section 14 where specific period has already been defined.
22. 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.
23. In the present matter the cause of action arose on 13.02.2020 when the offer of possession was made by the respondent to the complainants. The complainants have filed the present complaint on 14.07.2021. 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 26.01.2025. 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 balance amount due to the complainants from the respondent on account of interest.

24. 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.”

25. Clause 11 of the buyer’s agreement provides the time period of handing over possession and the same is reproduced below:

“Clause 11 (a) Time of handing over the possession

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

26. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the unit within a period of 36 months from the date of execution of buyer’s agreement. The buyer’s agreement was executed on 27.01.2010 .Further, it was provided in the buyer’s agreement that company

shall be entitled to a grace period of three months, for applying and obtaining the completion certificate/ occupation certificate in respect of the unit and/or the project.

27. The Authority put reliance 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 three months for applying and obtaining the occupation certificate. The relevant para 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.

28. 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 27.04.2013.
29. **Admissibility of delay possession charges at prescribed rate of interest:**
The complainants are seeking delay possession charges at the prescribed rate of interest on the amount already paid by them. 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.

30. 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.
31. 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 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11%.
32. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, 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;"

33. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.
34. 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 11 of the agreement, the possession of the subject apartment was to be delivered within 36 months from the date of execution of the buyer's agreement. For the reasons quoted above, the due date of possession is to be calculated from the date of execution of the buyer's agreement i.e., 27.01.2010 and the said time period of three months is allowed, therefore due date of possession comes out to be 27.04.2013.
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 05.03.2019. The respondent offered the possession of the unit in question to the complainant on 13.02.2020. 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 18.09.2020. Therefore, in the interest of natural justice, the complainant should be given two months' time from the date of offer of possession. This two 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., 27.04.2013 till the date of offer of possession or actual handover whichever is earlier. The respondent has paid a delay compensation amount of Rs.9,67,542/- and the same will be deducted while paying the delay possession charges to the complainants.

36. As per facts on record complainant no.1 i.e., Col Kanwar Ripu Sain Jaswal has stepped into shoes of the original allottee through nomination letter dated 24.03.2011 whereas complainant no. 2 i.e., Mehak Jaiswal has stepped into the shoes on 28.08.2020 after occupation certificate was issued in respect of unit in question on 05.03.2019 and after offer of possession was made to complainant no.1 on 13.02.2020. It is observed that only complainant no.1 has suffered the delay as he has become allottee prior to the due date of possession but complainant no. 2 has never suffered any delay and also respondent builder had neither sent any payment demands to her nor she had paid any payment to the respondent. So, keeping in view all the facts, the complainant no. 2 is not entitled for delay possession charges and other reliefs. Inadvertently it has been recorded that delayed possession charges are allowed to complainants vide proceeding dated 13.08.2024. However, Delayed possession charges are allowed to complainants no.1 only.

37. 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 no. 1 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., 27.04.2013 till the date of offer of possession or actual handover 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 remit back the amount charged on account of fixed deposit of HVAT, advance monthly maintenance charges for a period of 12 months and interest free maintenance security.

38. It is important to note that the conveyance deed was executed between the parties on 30.10.2020. The conveyance deed is a legal document that transfers the title of property from one party to another, signifying the completion of the property transaction especially regarding payments related to the purchase price, taxes, registration fees, and any other contractual financial commitments outlined in the agreement. However, despite the conclusion of the financial obligations, the statutory rights of the allottee persist if any provided under the relevant Act/Rules framed thereunder. Execution of conveyance deed is a sort of entering into a new agreement which inter alia signifies that both parties are satisfied with the considerations exchanged between them, and also that all other obligations have been duly discharged except the facts recorded in the conveyance deed. The said clause reproduced below as:

That the actual, physical, vacant possession of the said Apartment has been handed over to the Vendee and the Vendee hereby confirms taking over possession of the said Apartment / parking space(s) from the Vendors after satisfying himself / herself that the construction as also the various installations like electrification work, sanitary fittings, water and sewerage

connection etc. have been made and provided in accordance with the drawings, designs and specifications as agreed and are in good order and condition and that the Vendee is fully satisfied in this regard and has no complaint or claim in respect of the area of the said Apartment, any item of work, material, quality of work, installation etc., therein.

39. It is pertinent to mention here that complainants took the possession and got the conveyance deed executed, without any demur, protest or claim. The complainants have neither raised any grievance at the time of taking over the possession or at the time of execution of the conveyance deed, nor reserved any right in the covenants of the conveyance deed, to claim any refund of preferential location charges or any other charges. Also, it is a matter of record that no allegation has been levelled by the complainants that conveyance deed has been got executed under coercion or by any unfair means.
40. The Authority is of view that after the execution of the conveyance deed between the complainants and the respondent, all the financial liabilities between the parties come to an end except the statutory rights of the allottee including right to claim compensation for delayed handing over of possession and compensation under section 14 (3) and 18 of the RERA Act, 2016. In view of the above, the complainants cannot press for any other relief with respect to financial transaction between the parties after execution of conveyance deed except the statutory obligations specifically provided in the Act of 2016.

G.III Direct the respondent to not to ask for any charges which is not as per the buyer agreement.

41. The respondent shall not charge anything from the complainants which are not the part of the buyer's agreement.

H. Directions of the Authority:

42. 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 functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondent/promoter is directed to pay to the complainant no.1 (inadvertently recorded as complainants in proceedings dated 13.08.2024) delayed possession charges at the prescribed rate of 11% per annum for every month of delay from the due date of possession i.e., 27.04.2013 till the date of offer of possession plus two months or the date of actual handing over whichever is earlier as per proviso to section 18(1) of the Act, read with rule 15 of the rules.
- ii) The amount of Rs.9,67,542/- already paid by the respondent to the complainant as per statement of account dated 14.07.2021 by the respondent as delay compensation in terms of the buyer's agreement shall be adjusted towards delay possession charges payable by the promoter.
- iii) The respondent shall not charge anything from the complainant no. 1 which is not the part of the buyer's agreement.

43. Complaint stands disposed of.

44. 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