



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

**Date of decision: 24.09.2024**

NAME OF THE BUILDER		M/S Emaar India Limited.	
PROJECT NAME		"Emerald Hills - Floors", Sector- 65, Gurugram, Haryana	
S. No.	Case No.	Case title	Appearance
1.	CR/1760/2022	Monika Sharma and Pankaj Kumar Jangid V/S Emaar India Limited	Adv. Varun Chugh (Complainant) Adv. Ishaan Dang (Respondent)
2.	CR/1762/2022	Ved Prajapati V/S Emaar India Limited	Adv. Varun Chugh (Complainant) Adv. Ishaan Dang (Respondent)
3.	CR/304/2022	Bhaskar Choudhuri V/S Emaar MGF Land Limited	Adv. Sanjeev Sharma (Complainant) Adv. Ishaan Dang (Respondent)

**CORAM:**

Shri Arun Kumar  
Shri Vijay Kumar Goyal  
Shri Ashok Sangwan

**Chairman**  
**Member**  
**Member**

**ORDER**

1. This order shall dispose of 3 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 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, "Emerald Hills - Floors", Sector- 65, Gurugram, Haryana, being developed by the respondent/promoter i.e., M/s Emaar India Limited. The terms and conditions of the allotment letter, buyer's agreements, 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 thus seeking award for delayed possession charges and cost of litigation.
3. The details of the complaints, 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>	"Emerald Hills - Floors", Sector- 65, Gurugram, Haryana.
<b>Project area</b>	102.7412 acres
<b>Nature of the project</b>	Group housing colony
<b>DTCP license no. and other details</b>	10 of 2012 dated 21.05.2009 Valid up to- 02.02.2020 Licensee- Kaanha Infrastructure and 2 others
<b>RERA Registered/ not registered</b>	Registered vide no. 162 of 2017 dated 29.08.2017 Valid up to 28.08.2022
<b>Occupation certificate</b>	09.06.2016 and 30.05.2018
<b>Possession clause as per buyer's agreement</b>	<b>13. POSSESSION</b> <b>(i) Time of handing over of possession</b> "Subject to terms of this clause and subject to the Allottee(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 compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Floor <i>within 27 months, from the date of execution of this Agreement. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of</i>



*six months, for applying and obtaining the occupation certificate in respect of the Floor and/or the Project".*

S. No.	Complaint no., Case title, Date of filing of complaint and reply status	Unit no. and size	Allotment Letter And BBA	Due date of possession	Total sale consideration and Total amount paid by the complainant in Rs.	Date of offer of possession and unit handover letter	Conveyanc e Deed executed on
1.	CR/1760/2022  Monika Sharma and Pankaj Kumar Jangid V/S Emaar India Limited  <b>DOF:</b> 25.04.2022  <b>RR:</b> 19.07.2022	EHF- 267-A- SF- 116, block Amber  267 sq. yards.  [Page 18 of the compla int]	<b>AL:-</b> 08.07.2009 [Page 39 of Reply]  <b>BBA</b> 28.02.2010 [Page 44 of reply]	28.11.2012  [Note:- calculated from the date execution of buyer's agreement i.e., 28.02.2010 + 6 months grace period]	<b>TC:</b>  55,49,571/-  <b>AP:</b>  55,49,572/-  [As per statement of account dated 21.06.2019 at page 53 of complaint]	<b>OOP</b>  31.07.2018  [Page 112 of the reply]  <b>UHL</b>  21.09.2018  [Page 117 of the reply]	17.12.2018  [Page 122 of the reply]
2.	CR/1762/2022  Ved Prajapati V/S Emaar India Limited  <b>DOF:</b> 25.04.2022  <b>RR:</b> 19.07.2022	EHF- 267-A- FF- 110, First floor block Amber  267 sq. yards [Page 18 of the compla int]	<b>AL:-</b> 03.07.2009 [Page 35 of reply]  <b>BBA</b> 17.03.2010 <b>(Page no. 17 of complaint)</b>	17.12.2012  [Note:- calculated from the date execution of buyer's agreement i.e., 17.03.2010 + 6 months grace period]	<b>TC:</b>  58,30,315/-  <b>AP:</b>  58,30,315/-  [as per statement of account dated 22.09.2020 at page 53 of complaint]	<b>OOP</b>  30.07.2018  [Page 107 of the reply]  <b>UHL</b>  23.11.2018  [Page 115 of the reply]	09.01.2019  [Page 121 of the reply]
3.	CR/304/2022	EHF- 267-]- FF- 024,	<b>AL:-</b> 23.07.2009	17.12.2012	<b>TC:</b>  53,34,696/-	<b>OOP</b>  12.07.2017	21.07.2017  [Page 155 of the reply]



Bhaskar Choudhuri V/S Emaar MGF Land Limited  <b>DOF:</b> 01.02.2022  <b>RR:</b> 12.05.2022	Block Jemma 267 sq. yards [page 19 of complaint]	[Page 38 of reply] <b>BBA</b> 17.03.2010 [page 54 of reply]	<b>[Note:-</b> calculated from the date execution of buyer's agreement i.e., 17.03.2010 + 6 months grace period]	<b>AP:</b> <b>49,12,592/-</b>  [as per statement of account dated 12.04.2017 at page 146 of reply]	[Page 140 of the reply]  <b>UHL</b> 27.05.2017 [Page 149 of the reply]
<b>Relief sought by the complainant:-</b>					
i. Direct the respondent to pay interest @ of 18 % towards delay in handing over the unit. ii. Direct the respondent to pay a sum of Rs.50,000/- to the complainants as cost of litigation.					
<b>Note:</b> In the table referred above certain abbreviations have been used. They are elaborated as follows:					
<b>Abbreviation</b>	<b>Full form</b>				
DOF	Date of filing of complaint				
RR	Reply received by the respondent				
TC	Total consideration				
AP	Amount paid by the allottee/s				
BBA	Builder Buyer's Agreement				
AL	Allotment Letter				
OOP	Offer of possession				
UHL	Unit Handover Letter				

4. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/1760/2022** titled as **Monika Sharma and Pankaj Kumar Jangid V/S Emaar India Limited** are being taken into consideration for determining the rights of the allottee(s).

**A. Project and unit related details**

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

**CR/1760/2022 titled as Monika Sharma and Pankaj Kumar Jangid V/S Emaar India Limited**

S. No.	Particulars	Details
1.	Name and location of the project	"Emerald Hills" at sector 65, Urban Estate, Gurgaon, Haryana

2.	Nature of the project	Commercial Complex
3.	Project area	102.741 acres
4.	DTCP license no.	10 of 2012 dated 21.05.2019
5.	Name of licensee	M/s Logical Developers Pvt. Ltd. and 15 others
6.	RERA Registered/ not registered	Registered vide no. 162 of 2017 dated 29.08.2017 up to 28.08.2022
7.	Unit no.	EHF-267-A-SF-116, block Amber [Page 18 of the complaint]
8.	Area admeasuring	267 sq. yards. [Page 17 of the complaint]
9.	Date of provisional allotment in favour of original allottee (Shantanu Bhowmick)	08.07.2009 [Page 39 of the reply]
10.	Buyer's agreement executed between respondent and Prabhjeev Singh Narang and Manmeet Kaur Narang (1 <sup>st</sup> subsequent allottee) on	28.02.2010 [Page 44 of reply]
11.	1 <sup>st</sup> subsequent allottee (Prabhjeev Singh Narang and Manmeet Kaur Narang) sold the subject unit to 2 <sup>nd</sup> subsequent allottee (Madan Mohan Bhatia and Suneeta Narang) vide agreement to sell dated	29.07.2011 [As admitted by the respondent on page 3 of reply]
12.	Complainants are 3 <sup>rd</sup> subsequent allottee	The complainants purchased the subject unit from 2 <sup>nd</sup> subsequent allottee (Madan Mohan Bhatia and Suneeta Narang) vide agreement to sell dated 05.10.2017. [Page 103 of reply] The same was acknowledged by the respondent vide <b>nomination letter dated 04.12.2017</b> [Page 47 of complaint]
13.	Possession clause	<b>Clause 13</b> Subject to terms of this clause and subject to the Allottee(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 compliance with all provisions, formalities, documentation

		etc., as prescribed by the Company, the Company proposes to hand over the possession of the Floor <b>within 27 months, from the date of execution of this Agreement.</b> The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of six months, for applying and obtaining the occupation certificate in respect of the Floor and/or the Project. [Page 59 of reply]
14.	Due date of possession	28.11.2012 [Note:- calculated from the date execution of buyer's agreement i.e., 28.02.2010 + 6 months grace period]
15.	Total sale consideration as per statement of account dated 21.06.2019 at page 53 of complaint	Rs.55,49,571/-
16.	Amount paid by the complainant as per statement of account dated 21.06.2019 at page 53 of complaint	Rs.55,49,572/-
17.	Occupation certificate	30.05.2018 [Page 159 of the reply]
18.	Offer of possession to the complainants	31.07.2018 [Page 112 of the reply]
19.	Unit handover letter to the complainants	21.09.2018 [Page 117 of the reply]
20.	Deed of conveyance to the complainants	17.12.2018 [Page 122 of the reply]
21.	Delay compensation paid by the respondent as per the terms of the buyer's agreement as per statement of account dated 21.06.2019 at page 54 of complaint	Rs.2,82,265/-

## B. Facts of the complaint

6. The complainants have made the following submissions in the complaint: -

- I. That initially, the unit in question i.e. floor bearing No. EHF-267-A-SF-116 (second floor) admeasuring 267 sq. yards, in the project of the respondent i.e., M/s Emaar India Limited, known as "Emerald Hills Floors" situated at Sector-65, Gurugram, Haryana, was booked by Sh. Prabhjeev Singh Narang and Smt. Manmeet Kaur Narang.
- II. That thereafter, on 28.02.2010, the above named persons entered into a builder buyer's agreement with the respondent, by virtue of which the respondent allotted a floor bearing no. EHF-267-A-SF-116 (Second Floor) admeasuring 267 sq. yards, along-with car parking space in the project. Subsequent thereto, in the year 2011 itself, the above named persons sold the property in question to Ms. Suneeta Narang and Mr. Madan Mohan Bhatia from whom, the complainants herein had purchased the said unit and the unit was later assigned to the complainants, by the respondent, by virtue of the assignment letter dated 04.12.2017.
- III. That in the said buyer's agreement the respondent had categorically stated that the possession of the said floor would be handed over within 27 months from the date of signing of the builder buyer's agreement, with a further grace period of another 6 months. Moreover, at the time of transferring the floor in question, the complainants were further coerced by the respondent to sign affidavits/indemnity cum undertaking, in favour of the respondent wherein the complainants were required to undertake, not to claim or raise any compensation for delay in handing over possession of the property.
- IV. That the said buyer's agreement and the indemnity cum undertaking are totally one sided, which impose completely biased terms and conditions upon the complainants, thereby tilting the balance of power in favour of the respondent, which is further manifest from the fact that the delay in handing over the possession by the respondent would attract only a meagre



penalty of Rs.10/- per sq. ft., on the super area of the flat, on monthly basis, whereas the penalty for failure to take possession would attract holding charges of Rs.10/- per sq. ft. and 15% penal interest per annum compounded quarterly on the unpaid amount of instalment due to the respondent.

- V. That, the respondent has breached the fundamental term of the contract by inordinately delaying in delivery of the possession by 74 months. It is pertinent to mention here that the possession of the property in question was finally offered on 31.07.2018. The respondent has committed various acts of omission and commission by making incorrect and false statement in the advertisement material as well as by committing other serious acts as mentioned in preceding paragraph.
- VI. That the complainants, without any default, had been timely paying the instalments towards the property, as and when demanded by the respondent towards the aforesaid residential floor in the project and after making the balance payment which was to be made at the time of offering of possession, got the conveyance deed in their name on 17.12.2018.
- VII. That the respondent has even failed to provide the compensation as per the terms of the builder buyer's agreement and has paid only a meagre sum of Rs.2,82,265/-, for the entire period of delay in handing over the possession of the unit.
- VIII. That the respondent has not acknowledged the requests of the complainants in regard to the delayed compensation. In fact, the promised amenities are missing. The complainants were made to make advance deposit on the basis of information contained in the brochure, which is false on the face of it.



IX. That the complainants, therefore, seek direction to the respondent to pay interest @ 18% p.a. as payment, towards delay in handing over the property in question.

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

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

- I. Direct the respondent to pay interest at the rate of 18 % towards delay in handing over the unit.
- II. Direct the respondent to pay a sum of Rs.50,000/- to the complainants as cost of litigation.

8. 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**

9. The respondent has contested the complaint on the following grounds:-

- I. That the present complaint is not maintainable in law or on facts. It is submitted that the present complaint is not maintainable before this Authority. The complainants have no locus standi or cause of action to file the present complaint after execution of conveyance deed. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 28.02.2010, as shall be evident from the submissions made in the following paragraphs of the present reply.
- II. That the complainants are not 'aggrieved persons' under the Act but are investors who have booked the unit in question in order to earn profit from its resale or earn rental income therefrom. The complainants have not purchased the unit in question with a view to reside in the same.

- III. That Mr. Shantanu Bhowmick, Ms. Ruchika Sehgal and Mr. Manish Madan (hereinafter referred to as the original allottees) had approached the respondent in June 2009 for the purchase of a unit in its upcoming residential project "Emerald Floors" at Emerald Hills situated in Sector 65, Gurgaon.
- IV. That without prejudice to the above, it is stated that the statement of objects and reasons of the Act clearly states that the Act is enacted for effective consumer protection. The Act has not been enacted to protect the interest of investors. As the said Act has not defined the term "consumer", therefore, the definition of "consumer" as provided under the Consumer Protection Act, 1986 has to be referred for adjudication of the present complaint. A bare reading of the definition of the definition of "consumer" makes the present complaint as not maintainable, as such, the present complaint merit dismissal.
- V. That thereafter the original allottees vide application form applied to the respondent for provisional allotment of a unit in the project. The original allottees were allotted a unit bearing no EHF-267-A-SF-116 in the project vide provisional allotment letter dated 08.07.2009. Thereafter, the said unit was sold to Mr. Prabhjeev Singh Narang and Mrs. Manmeet Kaur Narang vide agreement to sell dated 16.11.2009.
- VI. That buyer's agreement dated 28.02.2010 was executed between Mr. Prabhjeev Singh Narang and Mrs. Manmeet Kaur Narang and the respondent. The allottees in question consciously opted for a construction linked plan for remittance of the sale consideration for the said unit and further agreed and undertook to the respondent that they shall remit every installment on time as per the payment schedule.



- VII. That thereafter, Mr. Prabhjeev Singh Narang and Mrs. Manmeet Kaur Narang further sold the unit in question to Mr. Madan Mohan Bhatia and Mrs. Suneeta Narang vide agreement to sell dated 29.07.2011. Eventually, Mr. Madan Mohan Bhatia and Mrs. Suneeta Narang sold the unit in question to the complainants vide agreement to sell dated 05.10.2017. The complainants had also executed an indemnity cum undertaking dated 30.08.2018 in favour of the respondent.
- VIII. That however, right from the beginning, the previous allottees and the complainants were irregular regarding the remittance of installments on time.
- IX. That construction of the unit was completed and the respondent applied for issuance of the occupation certificate on 21.09.2017 from the competent authority and the occupation certificate was issued on 30.05.2018. The possession of the unit was offered to the complainant vide letter of offer of possession dated 31.07.2018. The complainants were called upon to remit balance amount as per the buyer's agreement and complete the requisite documentation and formalities to enable the respondent to hand over possession of the unit to the complainants.
- X. That possession of the unit was handed over to the complainants on 21.09.2018 after the complainants were fully satisfied with the unit in all respects and acknowledged that the respondent had duly discharged its obligations under the buyer's agreement. The conveyance deed bearing vasika number 10947 dated 17.12.2018 was registered in favour of the complainants.
- XI. That the complainants have availed a loan on the said property and the tripartite agreement dated 07.12.2017 .It is pertinent to mention herein that Punjab National Bank ought to have been impleaded as a party to the



present complaint. The complaint is bad in law for non-joinder of a necessary party.

- XII. That it is respectfully submitted that in view of the documents and the conveyance deed executed by the complainants, the complainants are estopped from demanding any compensation and from instituting the present complaint. Furthermore, it is submitted that the complainants have purchased the unit in resale from the original allottees and subsequent allottees vide agreement to sell dated 05.10.2017 which had been executed well after the so called due date of possession as per the buyer's agreement. The time lines for delivery of possession have been waived by the complainants.
- XIII. That without prejudice to the submission of the respondent that the complainants are not entitled to claim any compensation/interest for alleged delay in delivery of possession since at the time of the execution of the documents/agreement of sale dated 05.10.2017, they were well aware of the due date of possession.
- XIV. That without prejudice to submissions of the respondent, delayed possession interest if any has to be calculated from the date when subsequent allottee entered into the shoes of the original allottee i.e. 04.12.2017 and not from the date of due date of possession.
- XV. That the complainants purchased the unit in resale on 05.10.2017 and possession was offered on 31.07.2018. Thus, there is no delay on the part of the respondent and thus, the institution of the present complaint seeking interest/compensation for alleged delay in delivery of possession, is grossly premature.
- XVI. That it is pertinent to mention herein that at the time when the complainant had agreed to purchase the unit from the previous allottees,

the complainants were conscious and aware that construction of the said unit had been delayed.

- XVII. That the complainants have filed the complaint on 16.04.2022. It is evident from the unit handover letter dated 21.09.2018 that the complaint filed by the complainants is barred by limitation. It is submitted that in case the period of limitation is construed from the execution and registration of conveyance deed even then the complaint is barred by limitation. The complaint filed by the complainant is liable to be dismissed outright on this ground as well.
- XVIII. The respondent has filed the written submission and the same has taken on record and perused.
- XIX. All other averments made in the complaints were denied in toto.
10. 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 on the basis of these undisputed documents and submission made by the parties.
11. The respondent has filed the written submissions on 23.01.2024, which is taken on record and has been considered by the authority while adjudicating upon the relief sought by the complainants.

**E. Jurisdiction of the authority**

12. 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**

13. 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**

14. 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) The promoter shall-*

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

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

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

15. So, in view of the provisions of the Act of 2016 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. Objections raised by the respondent.**

##### **F.I Objection regarding maintainability of complaint on account of complainant being investor.**

16. The respondent took a stand that the complainants are investors and not consumers and 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. 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 have paid a total price of Rs.55,49,572/- 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;"*

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

**F.II Weather the complainants can claim delayed possession charges after execution of conveyance deed.**

18. It has been contended by the respondent that on execution of conveyance deed, the relationship between both the parties' stands concluded and no right or liabilities can be asserted by the respondent or the complainant against the other. Therefore, the complainants are estopped from claiming any interest in the facts and circumstances of the case.
19. 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.

20. 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.
21. 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."*

22. The authority has already taken a view in in ***CR/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

complainant never gave up his statutory right to seek delayed possession charges as per the provisions of the said Act.

23. After consideration of all the facts and circumstances, the authority holds that even after execution of the conveyance deed, the complainant/allottee cannot be precluded from his right to seek delay possession charges from the respondent/promoter.

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

24. 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.
25. 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.
26. In CR/1760/2022 the cause of action arose on 31.07.2018 when the offer of possession was made by the respondent to the complainant. The complainant has filed the present complaint on 25.04.2022 which is 3 years 8 months and 25 days from the date of cause of action. In the present matter the three year period

of delay in filing of the case also after taking into account the exclusion period from 15.03.2020 to 28.02.2022 would fall on 14.07.2023. In view of the above, the Authority is of the view that the present complaint has been filed within a reasonable period of delay and is not barred by limitation.

27. In CR/1762/2022 the cause of action arose on 30.07.2018 when the offer of possession was made by the respondent to the complainant. The complainant has filed the present complaint on 25.04.2022 which is 3 years 8 months and 26 days from the date of cause of action. In the present matter the three year period of delay in filing of the case also after taking into account the exclusion period from 15.03.2020 to 28.02.2022 would fall on 15.07.2023. In view of the above, the Authority is of the view that the present complaint has been filed within a reasonable period of delay and is not barred by limitation.
28. In CR/304/2022 the cause of action arose on 12.04.2017 when the offer of possession was made by the respondent to the complainant. The complainant has filed the present complaint on 01.02.2022 which is 4 years 9 months and 20 days from the date of cause of action. In the present matter the three year period of delay in filing of the case also after taking into account the exclusion period from 15.03.2020 to 28.02.2022 would fall on 29.05.2022. In view of the above, the Authority is of the view that the present complaint has been filed within a reasonable period of delay and is not barred by limitation.

**F.IV Where the subsequent allottee has stepped into the shoes of the original allottee after coming into force of the Act:**

29. There may be a situation where an allottee transferred his unit in favour of a subsequent allottee after the Act came into force and where the project has been registered under the Act by the respondent. It was argued by the promoter that in cases where the subsequent allottee came into picture after the registration of the project under the provisions of the Act with the authority, then the date of

completion of the project and handing over the possession shall be the date declared by the promoter under section 4(2)(I)(C) of the Act. The counsel of the respondent further argued that the while purchasing the unit, it is presumed that the allottee very well knew that the project would be completed by that specific declared date, therefore, the delayed possession charges shall not be allowed.

30. The authority is of the view that the time period for handing over the possession as committed by the builder as per the relevant clause of builder buyer's agreement and the commitment of the promoter regarding handing over of possession of the unit is taken accordingly. The new timeline indicated in respect of ongoing project by the promoter while making an application for registration of the project does not change the commitment of the promoter to hand over the possession by the due date as per the builder buyer's agreement and the promoter is liable for the consequences and obligations arising out of failure in handing over possession by the due date as committed by him in the builder buyer's agreement and is liable for the delayed possession charges as provided in proviso to section 18(1) of the Act. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. The same issue has been dealt by Hon'ble Bombay High Court in case titled as **Neelkamal Realtors Suburban Pvt. Ltd.** (supra) wherein it was held that the RERA Act does not contemplate rewriting of contract between the allottee and the promoter. The relevant para of the judgement is reproduced below:

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

31. However, complainants were well aware about the fact that the construction of the tower where the subject unit is situated has not been completed and occupation certificate qua that part of project is yet to be obtained. Further, they still chosen to proceed with execution of the agreement voluntarily which means that the complainant had accepted the factum of the delay. Moreover, they have not suffered any delay as the subsequent allottee/complainants herein came into picture only on 04.12.2017 when the subject unit was endorsed in his favour. Hence, in such an eventuality and in the interest of natural justice, delay possession charges can only be granted to the complainant from the date of nomination dated 04.12.2017 i.e., date on which the complainant stepped into the shoes of the original allottee.

**G. Findings on the relief sought by the complainant**

**G.I Direct the respondent to pay interest @ of 18% of delay in offering possession from the date of payment till the date of delivery of possession.**

32. In the present complaint, the original allottee was allotted a unit vide allotment letter dated 08.07.2009 and thereafter the original allottee sold the subject unit to the first subsequent allottee on 16.11.2009 following which the first subsequent allottee sold the subject unit to the second subsequent allottee on 29.07.2011 and then the second subsequent allottee sold the subject unit to the 3<sup>rd</sup> subsequent allottee being the complainants herein on 05.10.2017, and the same was acknowledged by the respondent vide nomination letter dated 04.12.2017. Therefore, the complainant stepped into the shoes of original allottee on 04.12.2017.

33. The complainant intends 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."*

34. As per clause 13 of the floor buyer's agreement provides the time period of handing over possession and the same is reproduced below:

**Clause 13**

**(i) Time of handing over of possession**

*Subject to terms of this clause and subject to the Allottee(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 compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Floor **within 27 months, from the date of execution of this Agreement**. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of six months, for applying and obtaining the occupation certificate in respect of the Floor and/or the Project.*

35. At the outset, it is relevant to comment on the present possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by him in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment time period for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and

drafted such mischievous clause in the agreement and the allottees is left with no option but to sign on the dotted lines.

36. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the unit within a period of 27 months from the date of this agreement. The buyer's agreement was executed on 28.02.2010. Further, it was provided in the buyer's agreement that company shall be entitled to a grace period of six months, for applying and obtaining the completion certificate/ occupation certificate in respect of the unit and/or the project.
37. 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 aforesaid clause of the agreement, possession of the unit was to be delivered within 24 months from the date of execution of the agreement i.e. by 07.03.2014. As per the above said clause 11(a) of the agreement, a grace period of 3 months for obtaining Occupation Certificate etc. has been provided. The perusal of the Occupation Certificate dated 11.11.2020 placed at page no. 317 of the paper book reveals that the appellant-promoter has applied for grant of Occupation Certificate on 21.07.2020 which was ultimately granted on 11.11.2020. It is also well known that it takes time to apply and obtain Occupation Certificate from the concerned authority. As per section 18 of the Act, if the project of the promoter is delayed and if the allottee wishes to withdraw then he has the option to withdraw from the project and seek refund of the amount or if the allottee does not intend to withdraw from the project and wishes to continue with the project, the allottee is to be paid interest by the promoter for each month of the delay. In our opinion if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. So, in view of the above said circumstances, the appellant-promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the Occupation Certificate. Thus, with inclusion of grace period of 3 months as per the provisions in clause 11 (a) of the agreement, the total completion*

*period becomes 27 months. Thus, the due date of delivery of possession comes out to 07.06.2014."*

38. 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 28.11.2012.

39. **Admissibility of delay possession charges at prescribed rate of interest:**

The complainant is seeking delay possession charges at the prescribed rate of interest on the amount already paid by him. 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.*

40. 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.

41. 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., 24.09.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.



42. 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.
43. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
44. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the Authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 13 of the agreement, the possession of the subject apartment was to be delivered within 27 months from the date of execution of buyer's agreement and it is further provided in agreement that promoter shall be entitled to a grace period of six months for applying and obtaining completion certificate /occupation certificate in respect of said floor. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to 28.11.2012. In the present case, the complainant was offered possession by the respondent on 31.07.2018 after obtaining occupation certificate dated 30.05.2018 from the competent authority. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement executed between the parties.
45. In the present complaint, the original allottee was allotted a unit vide allotment letter dated 08.07.2009 and thereafter the original allottee sold the subject unit

to the first subsequent allottee on 16.11.2009 following which the first subsequent allottee sold the subject unit to the second subsequent allottee on 29.07.2011 and then the second subsequent allottee sold the subject unit to the 3rd subsequent allottee being the complainants herein on 05.10.2017, and the same was acknowledged by the respondent vide nomination letter dated 04.12.2017. Therefore, the complainants stepped into the shoes of original allottee on 04.12.2017 i.e., after the due date. It simply means that the complainants were well aware about the fact that the construction of the tower where the subject unit is situated has not been completed and occupation certificate qua that part of project is yet to be obtained. However, he still chosen to proceed with execution of the agreement voluntarily which means that the complainant had accepted the factum of the delay. Moreover, they have not suffered any delay as the subsequent allottee/complainants herein came into picture only on 04.12.2017 when the subject unit was endorsed in his favour. Hence, in such an eventuality and in the interest of natural justice, delay possession charges can only be granted to the complainant from the date of nomination dated 04.12.2017 i.e., date on which the complainant stepped into the shoes of the original allottee. The Authority is of considered view that there is delay on the part of the respondents/promoter to offer of possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 28.02.2010. Accordingly, it is the failure of the respondent /promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.

46. The details of the nomination letter in each case are provided herein below:-

CR/1760/2022	CR/1762/2022	CR/304/2023
Allotment Letter Dated 08.07.2009, in favour of original allottee namely, Shantanu Bhowmick	Allotment letter dated 03.07.2009 in favour of the original allottee (Mr. Harpreet Singh and anr.)	Provisional allotment letter issued in favour of original allottee (Sangeeta Sharma) on 23.07.2009
Date of execution of buyer's agreement between the 1 <sup>st</sup> subsequent allottee (Prabhjeev Singh Narang and Manmeet Kaur Narang) and the respondent herein on 28.02.2010	Buyer's agreement executed between original allottee and the respondent on 17.03.2010	Date of execution of buyer's agreement between original allottee and the respondent on 17.03.2010
1 <sup>st</sup> subsequent allottee (Prabhjeev Singh Narang and Manmeet Kaur Narang) sold the subject unit to 2 <sup>nd</sup> subsequent allottee (Madan Mohan Bhatia and Suneeta Narang) Vide agreement to sell dated 29.07.2011	Original allottee (Mr. Harpreet Singh and anr.) sold the subject unit to 1 <sup>st</sup> subsequent allottee (Jyoti Verma) vide agreement to sell dated 04.10.2011	Agreement to sell between original allottee and the complainant herein 09.10.2013 the same was acknowledged by the respondent vide <b>nomination letter dated 25.10.2013</b>
Complainants herein are 3 <sup>rd</sup> subsequent allottee, the same was acknowledge by the respondent vide nomination letter dated 04.12.2017	Complainant is the 2 <sup>nd</sup> subsequent allottee vide agreement to sell dated 29.07.2017, the same was acknowledged by the respondent vide <b>nomination letter dated 20.09.2017</b>	

47. The following table concludes the time period for which the complainant-allottee is entitled to delayed possession charges in terms of proviso to section 18(1) of the Act:

S. no.	Complaint no.	Due date of possession	Nomination letter in favour of complainant herein	Offer of possession in favour of complainant	Period for which the complainant is entitled to DPC
1.	CR/1760/2022	21.02.2022	04.12.2017	31.07.2018	W.e.f. 04.12.2017 till 01.10.2018

2.	CR/1762/202 2	21.02.2022	20.09.2017	30.07.2018	W.e.f. 20.07.2017 till 30.09.2018
3.	CR/304/2022	21.02.2022	25.10.2013	12.07.2017	W.e.f. 25.10.2013 till 12.09.2017

48. 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. from the date of nomination letter i.e., 04.12.2017 till the date of offer of possession plus two months or till the date of handover whichever is earlier as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

**E.II Direct the respondent to pay an amount of Rs.50,000/- as litigation expenses.**

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

#### **H. Directions of the authority**


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


- i. The respondent/promoter is directed to pay interest at the prescribed rate i.e., 11.10% per annum for every month of delay on the amount paid by the complainant(s) from the date of nomination letter i.e., 04.12.2017 till the date of offer of possession plus two months or the date of handing over whichever is earlier as per proviso to section 18(1) of the Act read with rule 15 of the rules. The date of nomination letter and the date of entitlement of delay possession charges are detailed in table given in para 47 of this order. The respondent is directed to pay arrears of interest accrued so far within 90 days from the date of order of this order as per rule 16(2) of the rules.
- ii. Also, the amount of compensation already paid by the respondent towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.
- iii. The respondent is directed to not to charge anything which is not part of the buyer's agreement.


51. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order wherein details of paid up amount is mentioned in each of the complaints.

52. The complaints stand disposed of.

53. Files be consigned to registry.

  
(Ashok Sangwan)  
Member

  
(Vijay Kumar Goyal)  
Member

  
(Arun Kumar)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.09.2024