

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

Complaint no. : 4819 of 2022
Complaint filed on : 11.07.2022
Date of decision : 13.08.2024

Mrs. Sangeeta Misra

Address: 71, Friends Colony West,
2nd Floor, New Delhi 110065, Delhi

Complainant

Versus

M/s Emaar MGF Land Ltd.

Regd. office: 306-308, 3RD Floor, Square One,
C-2, District Centre, Saket, New Delhi -110017

Respondent

CORAM

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

APPEARANCE:

Shri Jagdeep Kumar
Shri JK Dang and Ishaan Dang

Counsel for Complainant
Counsel for Respondent

ORDER

1. The present complaint dated 11.07.2022 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 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 provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

Sr. No.	Particulars	Details
1.	Name of the project	Gurgaon Greens, Sector 102, Gurugram, Haryana
2.	Unit no.	GGN-15-0801, 8 th floor, tower no. 15 [annexure P1, page 28 of complaint]
	Unit area	1650 sq. ft. (approx.) [annexure P1, page 28 of complaint]
3.	Provisional allotment letter dated	07.03.2013 [annexure R2, page 40-47 of reply]
4.	Date of execution of buyer's agreement	05.04.2013 [annexure R4, page 25 of complaint]
5.	Agreement to sell executed between the original allottee and the complainant on	10.03.2013 [annexure R9, page 141-143 of reply]
6.	Nomination letter issued in favour of complainant dated	21.05.2013 [annexure R10, page 144 of reply]
7.	Possession clause	14. POSSESSION (a) Time of handing over the possession <i>Subject to terms of this clause and barring force majeure conditions, 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</i>



		<p>prescribed by the Company, the Company proposes to hand over the possession of the Unit within 36 (Thirty Six) months from the date of start of construction; subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the Company shall be entitled to a grace period of 5 (five) for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project.</p> <p>(Emphasis supplied)</p>
8.	Date of start of construction	14.06.2013 [As per SOA dated 15.06.2022 at page 84 of the complaint]
9.	Due date of possession 14.06.2016 without grace period	14.11.2016 [as per possession clause 36 months from dt. of construction i.e., 14.06.2013 plus 5 month of grace period]
10	Total consideration as per statement of account dated 15.06.2022 at page 84 of complaint	Rs.1,21,56,962/-
11	Total amount paid by the complainants as per statement of account dated 15.06.2022 at page 84 of complaint	Rs.1,21,98,681/-
12	Occupation certificate	05.12.2018 [annexure R15, page 156-158 of reply]
13	Offer of possession	13.12.2018 [annexure R16, page 159-166 of reply]

14	Unit handover letter dated	06.03.2019 [annexure R17, page 167 of reply]
15	Conveyance deed executed on	13.03.2019 [annexure R19, page 172-196 of reply]

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
- i. That the respondent had advertised itself as a very ethical business group that lives onto its commitments in delivering its housing projects as per promised quality standards and agreed timelines. They also assured to the consumers like complainants that they have secured all the necessary sanctions and approvals from the appropriate authorities for the construction and completion of the real estate project sold by them to the consumers in general.
 - ii. That the original allottee i.e., Mrs. Eva Rajput W/o Mr. Manish Rajput, was allotted the flat No. GGN-15-801 at Gurgaon Greens, Sector 102, Gurugram, Haryana, having super built up area admeasuring 1650 sq. ft. in the project for a total sale consideration exclusive of taxes is Rs.1,13,96,750/-.
 - iii. That the original allottee and respondent entered into a builder buyer's agreement on 05.04.2013 and subsequently the original allottee transfer the said unit in the name of complainants i.e., Mrs. Sangeeta Mishra. The complainant made payment of the amount Rs.7,50,000/- to original allottee as paid by him to respondent and the rest amount was paid to the respondent as and when demanded. Respondent confirmed nomination of the complainants for the said unit and receiving a total sum of Rs.30,04,635/- which is in line with agreement to sell dated 10.03.2013 executed between complainant and original allottee through nomination

letter dated 21.05.2013 and endorsed buyer's agreement on 22.04.2013 and original receipts endorsed in favor of complainant on 22.04.2014. A total of more than Rs.1,21,98,681/- was paid to the respondent by the complainant.

- iv. Complainants found buyer's agreement consisting very stringent and biased contractual terms which are illegal, arbitrary, unilateral and discriminatory in nature, because every clause of agreement is drafting in a one-sided way and a single breach of unilateral terms of provisional allotment letter by complainants, will cost him forfeiting of 15% of total consideration value of unit. When complainants opposed the unfair trade practices of respondent about the delay payment charges of 24% they said this is standard rule of company and company will also compensate at the rate of Rs.7.5 per sq. ft. per month in case of delay in possession of flat by company.
- v. That as per schedule of payments of buyer's agreement the total sale consideration exclusive of ST and GST taxes is Rs.1,13,96,750/- but later at the time of possession respondent added Rs.30,093/- in sale consideration and increase it to Rs.1,14,26,843/- without any reason for the same, and respondent also charged IFMS Rs.82500 separately, whereas IFMS charges already included in sale consideration and that way respondent charged IFMS twice from complainant. In total respondent increased the sale consideration by Rs.1,12,593/- without any reason which is a illegal , arbitrary unilateral and unfair trade practice. Complainant opposed the increase in sales consideration at time of possession but respondent did not pay any attention to complainant.
- vi. That as per the clause 14 of the said flat buyer's agreement dated 05.04.2013, the respondent had agreed and promise to complete the construction of the said flat and deliver its possession within a period of 36

months with a five (5) months grace period thereon from the date of start of construction (date of start of construction is 14 June-2013). However, the respondent has breached the terms of said flat buyer agreement and failed to fulfill its obligations and has not delivered possession of said flat within the agreed time frame of the builder buyer agreement. The proposed possession date as per Buyer's Agreement was due on 14 June 2016.

- vii. That the complainant has paid the entire sale consideration along with applicable taxes to the respondent for the said flat. As per the statement dated 15.06.2022, issued by the respondent, upon the request of the complainant, the complainant have already paid Rs.1,21,98,681/- towards total sale consideration plus taxes as on today to the respondent and now nothing is pending to be paid on the part of complainant. Although the respondent charged Rs.1,12,593/- extra on sales price without stating any reason for the same.
- viii. That due date of delivery of possession of said unit according to the flat buyer's agreement is 14.06.2016 (sic 14.11.2016 including grace period of 5 months). The complainants thereafter kept running from pillar to post asking for the delivery of his home but could not succeed in getting any reliable answer.
- ix. That the conduct on part of respondent regarding delay in delivery of possession of the said flat has clearly manifested that respondent never ever had any intention to deliver the said flat on time as agreed. The respondent in its advertisements had represented falsely regarding the delivery date of possession and resorted to all kind of unfair trade practices while transacting with the complainant.
- x. That the offer of possession offered by respondent through "intimation of possession" was not a valid offer of possession because respondent offered the possession on dated 13.12.2018 with stringent condition to pay certain

amounts which were never be a part of agreement and respondent did not received the completion certificate of various other towers of the project and as on 13.12.2018 project was delayed approx. two and half years. At the time of offer of possession builder did not adjust the penalty for delay possession. In case of delay payment, builder charged the penalty @24% per annum and in delay in possession give the Rs.7.5/- sq. ft. only, this is illegal, arbitrary, unilateral and discriminatory and above all respondent did not even adjust a single penny on account of delay in possession even after a delay of two and half years. Respondent demanded two-year advance maintenance charges from complainant which was never agreed under the buyer's agreement and respondent also demanded a lien marked FD of Rs. 3,59,579/- in pretext of future liability against HVAT which are also a unfair trade practice. Respondent left no other option to complainant, but to pay the payment of two-year maintenance charges Rs. 1,44,540/- and fixed deposit of Rs.3,59,579/- with a lien marked in favour of Emaar MGF Land Limited, Rs.3,20,820/- towards e-stamp duty charges of above said unit no. 801, Tower 15, Gurgaon Greens in addition to final demand raised by respondent along with the offer of possession. Respondent gave physical handover of aforesaid property on date 06.03.2019 after receiving last installment on 12.02.2019 from complainant.

- xi. That after taking possession of flat on 06.03.2019 complainant also identify that some major structural changes were done by respondent in project "Gurgaon Greens" in comparison to features of project narrated to complainant on 22.04.2013 at the office of respondent, Central Park's layout was shown to complainants at the time of booking as an area of prime attraction for which respondent charge PLC of Rs.4,95,000/- in pretext of complainants flat facing Central Green and area of central park was told 8 acre but in reality it is very small as compare to 8 acre and respondent also

build car parking underneath 'Central Park'. Complainants flat is not facing Central Green and the major portion of Central green is not visible from complainants flat. Most of the amenities are nowhere exist in project whereas it was highlight at the time of booking of flat.

- xii. Respondent charge exceptionally high PLC from complainant without even transferring the ownership rights of amenities to complainant on the common area of project. Respondent compelled almost every flat owner (total 672) through unilateral buyer's agreement to pay PLC of Rs.4,95,000/- for Central Park whereas respondent sell car parking of Rs.3,00,000/- each underneath Central Park, this way respondent sell same area twice to residents and collect exceptionally high and unilateral and unjustified PLC from complainant. Respondent only spread grass on roof of covered parking area and sell it as "Central Green" at exceptionally high rate of Rs 4,95,000/- each.
- xiii. Respondent did not provide the final measurement of above said unit No. 0801, Tower NO. 15, "Gurgaon Greens". Respondent charged all IDC, EDC and PLC and maintenance as per area of unit as 1650 sq. ft. but there is no architect confirmation provided by respondent about the final unit Area which respondent will going to handover to complainant.
- xiv. That the respondent has committed grave deficiency in services by delaying the delivery of possession and false promises made at the time of sale of the said flat which amounts to unfair trade practice which is immoral as well as illegal. The respondent charge PLC of Rs.4,95,000/- in pretext of 8 Acres of Central Park but the actual size of Central Green is below 2 acres of land and above all its not even visible from flat balcony. The respondent has also criminally misappropriated the money paid by the complainant as sale consideration of said flat by not delivering the unit on agreed timelines.

- xv. That the respondent has acted in a very deficient, unfair, wrongful, fraudulent manner by not delivering the said flat situated at the project "Gurgaon Greens" Sector-102, Gurugram within the timelines agreed in the flat buyer's agreement and otherwise.
- xvi. That the cause of action accrued in favour of the complainant and against the respondent on 06.03.2012 when the said flat was booked by original allottee and it further arose when respondent failed /neglected to deliver the said flat on proposed delivery date. The cause of action is continuing and is still subsisting on day-to-day basis.
- xvii. That the GST tax which has come into force on 01.07.2017, it is a fresh tax. The possession of the apartment was supposed to be delivered to complainant on 14.06.2016 (sic. 14.11.2016 including 6 month of grace period), therefore, the tax which has come into existence after the due date of possession of flat, this extra cost should not be levied on complainant.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
- Direct the respondent to pay interest at the rate of 18% on account of delay in offering possession on Rs. 1,21,98,681/- paid by the complainant as sale consideration of the said flat from the date of payment till the date of delivery of possession.
 - Direct the respondent to return Rs. 112593/-, amount unreasonably charged by respondent by increasing Sale Price after execution of buyer's agreement between respondent and complainant.
 - Direct the respondent to return PLC of Rs.495000/- 'Central Park' collected from complainant as the flat is not preferentially located.
 - Direct the respondent to return entire amount paid as GST tax by complainant between 01.07.2017 to 24.07.2019.
 - Direct the complainant's bank to remove the lien marked over fixed deposit of Rs.3,59,579/- in favour of respondent on the pretext of future payment of HVAT for the period of 01.04.2014 to 30.06.2017 and order to direct respondent to assist the process of removing lien from complainant's bank by providing NOC for the same.

- f. Direct the respondent to pay an amount of Rs. 55,000/- to the complainants as cost of the present litigation.
 - g. Hold the respondent guilty of indulging into unfair practices and providing deficient services to the complainants and award a compensation Rs.30,00,000 with the interest at MCLR rate of SBI plus 2% per annum from the actual first date of payment of amounts till realization.
 - h. Award pendent lite interest @18% per annum from the first date of payment of amounts till realization.
 - i. Grant the cost of litigation of Rs.50,000/- in favour of the complainants and against the Respondent.
5. 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:**
6. The respondent has contested the complaint on the following grounds:
- i. That the present complaint is not maintainable in law or on facts. The complainant has filed the present complaint seeking interest and compensation for alleged delay in delivering possession of the unit booked by the complainant. It is respectfully submitted that complaints pertaining to compensation and interest are to be decided by the Adjudicating Officer under Section 71 of the Real Estate (Regulation and Development) Act, 2016 read with Rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 and not by this Hon'ble Authority. The present complaint is liable to be dismissed on this ground alone.
 - ii. That the complainants have got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated

05.04.2013. That the complainants are estopped by their own acts, conduct, acquiescence, laches, omissions, etc. from filing the present complaint.

- iii. That the present complaint is not maintainable in law or on facts. The present complaint raises several such issues which cannot be decided in summary proceedings. Therefore, the disputes raised in the present complaint are beyond the purview of this Hon'ble Authority and can only be adjudicated by the Adjudicating Officer/Civil Court. The present complaint deserves to be dismissed on this ground alone.
- iv. That the complainant is estopped by her own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint.
- v. That as per the averments in the complaint, the due date for offer of possession was 14.06.2016. Therefore, without prejudice to the contentions of the respondent that there has been no delay or default on the part of the respondent and without admitting in any manner any truth in the allegations made by the complainant, it is submitted that the cause of action, if any, for filing of the present complaint arose prior to the date of coming into force of the present Act. Hence, the complaint is barred by limitation and liable to be dismissed on this ground also.
- vi. That the complainant is not "allottee" but investor who has purchased the unit in question as a speculative investment. That the complainant has concealed the real and true facts which are as under.
- vii. That the original allottee had approached the respondent and expressed her interest in booking a unit in the residential group housing project being developed by the respondent known as "Gurgaon Greens" situated in Sector 102, Village Dhankot, Tehsil & District Gurgaon. Prior to making the booking, the original allottee conducted extensive and independent enquiries with regard to the project and it was only after she was fully satisfied about all

- aspects of the project, that she took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question.
- viii. That the original allottee was provisionally allotted unit no GGN-15-0801, admeasuring 1650 square feet approx. (super area). The original allottee had opted for a construction linked payment plan. The buyer's agreement was executed between the original allottee and the respondent on 05.04.2013. It is pertinent to mention herein that the original allottee willingly and consciously executed by the buyer's agreement without raising any objections to the terms and conditions thereof, which are binding upon the original allottee as well as the complainant, as her successor in interest, with full force and effect.
- ix. That the original allottee had agreed and undertaken to make payment of sale consideration as per the payment plan. However, the original allottee as well as the complainant failed to make timely payment of sale consideration. Consequently, the respondent was compelled to issue reminders for payment. demand notices and reminders for payment issued by the Calculation sheet reflecting the payments made by the original allottee as well as the complainant are taken on record.
- x. That the original allottee and the complainant approached the respondent requesting that the allotment be transferred in the name of the complainant. It is pertinent to mention herein that the transfer documents were voluntarily and consciously executed by the complainant of her own free will. Prior to purchasing the unit in resale from the original allottee, the complainant had conducted her own due diligence and had fully satisfied herself about all aspects of the project. Agreement to sell dated 10th of March, 2013 was executed between the original allottee and the complainant. On the basis of the transfer documents executed by the complainant, nomination letter dated 21.05.2013 was issued by the respondent in her favour.

- xi. That it is pertinent to mention herein that as per the terms and conditions of the buyer's agreement, the complainant/original allottee were under a contractual obligation to make timely payment of all amounts payable under the buyer's agreement, on or before the due dates of payment failing which the respondent is entitled to levy delayed payment charges in accordance with Clause 1.2(c) read with Clauses 12 and 13 of the buyer's agreement.
- xii. That in the meanwhile, the respondent registered the project under the provisions of the Act. The project had been initially registered on dated 05.12.2017 till 31.12.2018. Subsequently, the registration of the project dated 02.08.2019 was extended up till 31.12.2019.
- xiii. That it is further submitted that despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. The respondent completed construction and had applied for the occupation certificate on 13.04.2018. Occupation Certificate in respect of unit in question was thereafter issued on 05.12.2018.
- xiv. That it is pertinent to note that once an application for grant of occupation certificate is submitted for approval in the office of the concerned statutory authority, the respondent ceases to have any control over the same. The grant of sanction of the occupation certificate is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence. Therefore, the time period utilised by the statutory authority to grant occupation certificate to the respondent is necessarily required to be excluded from computation of the time period utilised for implementation and development of the project.
- xv. That the complainant was very well aware that the due date of possession of the unit in question is deemed to be extended owing to certain force majeure circumstances and has acquiesced and agreed to this very fact. The demands

were raised after the so called due date and the payments were remitted without any protest or demur accordingly thereby agreeing to the extended delivery time lines as per the buyer's agreement.

- xvi. That upon receipt of the occupation certificate, the respondent had offered possession of the unit in question through offer of possession letter dated 13.12.2018 to the complainant.
- xvii. That thereafter, the complainant obtained possession of the unit in question and a unit handover letter dated 06.03.2019 and had executed by the complainant. It is submitted that prior to execution of the unit handover letter, the complainant had satisfied herself regarding the measurements, location, dimension, development etc. of the unit in question. The complainant only after satisfying herself with all the aspects including shape, size, location etc. of the unit in question, executed the unit handover letter stating that all the liabilities and obligations of respondent as enumerated in the allotment letter/buyer's agreement stood satisfied. Thereafter, the conveyance deed bearing Vasika no. 8866 dated 13.03.2019 was also registered in favour of the complainant. It is pertinent to note, that the complaint was filed on 06.07.2022 which is after 3 years of execution of the conveyance deed and hence the complaint is barred by limitation. The present complaint has been filed as an afterthought to extract monies from the respondent. Thus the present complaint is time barred and deserves to be dismissed at this very threshold with exemplary costs.
- xviii. Thus, it is evident that the entire case of the complainant is nothing but a web of lies and the false and frivolous allegations have been made against the respondent. The respondent has duly completed construction of the unit in question and has also offered possession of the same to the complainant within the time period stipulated under the buyer's agreement. There is no default or lapse on the part of the respondent.

- xix. That Clause 14 of the buyer's agreement provides that subject to force majeure conditions and delay caused on account of reasons beyond the control of the respondent, and subject to the allottee not being in default of any of the terms and conditions of the same, the Respondent expects to deliver possession of the unit within a period of 36 months plus five months grace period, from the date of start of construction. In the case of delay by the allottee in making payment or delay on account of reasons beyond the control of the respondent, the time for delivery of possession stands extended automatically. In the present case, the original allottee as well as the complainant are defaulters who have failed to make timely payment of sale consideration as per the payment plan and are thus in breach of the buyer's agreement. The time period for delivery of possession automatically stands extended in the case of the complainant. On account of delay and defaults by the original allottee/complainant, the due date for delivery of possession stands extended in accordance with clause 14(b)(iv) of the buyer's agreement, till payment of all outstanding amounts to the satisfaction of the respondent.
- xx. That so far as payment of compensation/interest to the complainant is concerned, it is submitted that the complainant, being in default, are not entitled to any compensation in terms of clause 16(c) of the buyer's agreement. Furthermore, in terms of clause 16(d) of the buyer's agreement, no compensation is payable due to delay or non-receipt of the occupation certificate, completion certificate and/or any other permission/sanction from the competent authority.
- xxi. That the respondent had completed construction of the unit/tower by April, 2018 and had applied for issuance of the occupation certificate on 13.04.2018. The occupation certificate was issued by the competent authority on 05.12.2018. Thus, the said period taken by the competent

authority in issuing the occupation certificate as well as time taken by Government/Statutory Authorities in granting the approvals, permissions etc. necessarily have to be excluded while computing the time period for delivery of possession.

- xxii. That the complaint is bad for non-joinder of necessary parties. It is submitted that the complainant had sought relief against the complainant's bank to remove the lien marked over the fixed deposits in favour of respondent without making the said bank as a party in the present complaint.
- xxiii. The respondent, despite default of several allottees, has diligently and earnestly pursued the development of the project in question and has constructed the project in question as expeditiously as possible. Therefore, there is no default or lapse on the part of the respondent and there is no equity in favour of the complainant.
- xxiv. That, without admitting or acknowledging the truth or legality of the allegations advanced by the complainant and without prejudice to the contentions of the respondent, it is respectfully submitted that the provisions of the Act are not retrospective in nature the complainant cannot claim any relief which is not contemplated under the provisions of the buyer's agreement. assuming, without in manner admitting any delay on the part of the respondent in delivering possession, it is submitted that the interest for the alleged delay demanded by the complainant is beyond the scope of the buyer's agreement as amended by the transfer documents executed by the parties.
- xxv. That it is evident from the entire sequence of events, that no illegality or lapse can be attributed to the respondent. Thus, the allegations levelled by the complainant qua the respondent are totally baseless and do not merit any consideration by this Hon'ble Authority. The present application is nothing

but an abuse of the process of law. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

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 decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

10. 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.

11. 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.

Findings on the objections raised by the respondent:

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

12. 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.
13. 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.
14. In the present matter the cause of action arose on 13.12.2018 when the offer of possession was made by the respondent to the complainant. The complainant has filed the present complaint on 11.07.2022 which is 3 years 6 months and 28 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 25.11.2023. 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.

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

15. The respondent took a stand that the complainant is investor and not consumers and therefore, he is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the allotment letter, it is revealed that the complainant is buyers, and he has paid a total price of Rs.1,21,98,681/- to the promoter towards purchase of a unit in its project.
16. 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 complainant can claim delayed possession charges after execution of conveyance deed?

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

conveyance deed as the same was executed in favour of the complainant on 13.03.2019.

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 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.

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

G. Findings on the relief sought by the complainant:

G.I Direct the respondent to pay interest at the rate of 18% on account of delay in offering possession on Rs.1,21,98,681/- paid by the complainant as sale consideration of the said flat from the date of payment till the date of delivery of possession.

23. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec 18(1) proviso reads as under:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

24. Clause 14 of the buyer's agreement dated 05.04.2013 provides for handing over of possession and is reproduced below:

14. POSSESSION

(a) Time of handing over the possession

*Subject to terms of this clause and barring force majeure conditions, 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 Unit **within 36 (Thirty Six) months from the date of start of construction**; subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the Company shall **be entitled to a grace period of 5 (five) for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project.***

25. **Due date of possession and admissibility of grace period:** The promoter has proposed to handover the possession of the said unit within 36 months from the date of commencement of construction and it is further provided in agreement that promoter shall be entitled to a grace period of five months for applying and obtaining completion certificate/occupation certificate in respect of said floor and/or project. The construction commenced on 14.06.2013 as per statement of account. The period of 36 months expired on 14.06.2016. Further, the complainant-builder has submitted that a grace period of 5 months may be allowed to it for applying and obtaining the completion certificate/occupation certificate in respect of the unit and/or the project in terms of order dated 08.05.2023 passed by the Hon'ble Appellate Tribunal in **Appeal No.433 of 2022 titled as Emaar MGF Land Limited Vs. Babia Tiwari and Yogesh Tiwari** wherein it has been held that if the allottees wish to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining occupation certificate. The relevant portion of the order dated 08.05.2023, is reproduced as under:

"As per aforesaid clause of the agreement, possession of the unit was to be delivered within 24 months from the date of execution of the agreement i.e., by 07.03.2014. As per the above said clause 11(a) of the agreement, a grace period of 3 months for obtaining Occupation



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

26. Therefore, in view of the above judgement and considering the provisions of the Act, the authority is of the view that, the promoter is entitled to avail grace period so provided in the agreement for applying and obtaining the occupation certificate. Therefore, the due date of handing over of possession comes out to be 14.11.2016 including grace period of 5 months.
27. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant are seeking delay possession charges however, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules.
28. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 13.08.2024 is @ 9%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e. 11%.

29. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the Authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per agreement. By virtue of clause 14 of the buyer's agreement executed between the original allottee and respondent on 05.04.2013, the possession of the subject unit to handover within thirty-six months from the date of start of construction i.e., 14.06.2013 along with grace period of 5 months, for applying and obtaining the completion certificate/ occupation certificate in respect of the unit and/ or the project i.e., 14.11.2016 (inadvertently mentioned in the proceeding of the day 13.08.2016 as 14.06.2016, which is without adding grace period of 5 months). The complainants/subsequent allottees had been acknowledged as an allottee by the respondent vide nomination letter dated 21.05.2013. Authority has also perused the builder buyer's agreement which was originally entered into between the original allottee i.e., Ms. Eva Rajput and the promoter M/s Emaar MGF Land Limited. The same builder buyer's agreement has been endorsed in favour of Sangeeta Mishra (complainant/subsequent allottee). All the terms of builder buyer's agreement remain the same so it is quite clear that the subsequent allottees has stepped into the shoes of the original allottee. So, the authority is of the view that in cases where the subsequent allottees had stepped into the shoes of original allottee before the due date of handing over possession, the delayed possession charges shall be granted w.e.f. due date of handing over possession. Therefore, the due date of handing over of possession come out to be 14.11.2016 (inadvertently mentioned in the proceeding of the day 13.08.2016 as 14.06.2016, which is without adding grace period of 5 months). The occupation certificate was granted by concerned authority on 05.12.2018 and thereafter the possession of the

subject unit was offered to the complainants on 13.12.2018. Therefore, the authority allows DPC as per the buyer's agreement i.e., 05.04.2013 from due date of possession i.e., 14.11.2016 till the offer of possession i.e. 13.12.2018 plus 2 months or actual handing over of possession, whichever is earlier. Copies of the same have placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject unit and it is failure on part of respondent to fulfil its obligations and responsibilities as per the buyer's agreement dated 05.04.2013 to handover the possession within the stipulated period.

30. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 05.12.2018. The respondent offered the possession of the unit in question to the complainant on 13.12.2018. 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 06.03.2019. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 month of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he must arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit, but this is subject to that the unit being handed over at the time of taking possession is in habitable condition.

31. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at rate of the prescribed interest @11% p.a. w.e.f. from the due date of

possession i.e., 14.11.2016 (inadvertently mentioned in the proceeding of the day 13.08.2016 as 14.06.2016, which is without adding grace period of 5 months) till the date of offer of possession i.e., 13.12.2018 plus two months or actual handing over of possession, whichever is earlier as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

- G.II Direct the respondent to return Rs.1,12,593/-, amount unreasonably charged by respondent by increasing Sale Price after execution of buyer's agreement between respondent and complainant.**
- G.III Direct the respondent to return PLC of Rs.495000/- 'Central Park' collected from complainant as the flat is not preferentially located.**
- G.IV Direct the respondent to return entire amount paid as GST tax by complainant between 01.07.2017 to 24.07.2019.**
- G.V Direct the complainant's bank to remove the lien marked over fixed deposit of Rs.3,59,579/- in favour of respondent on the pretext of future payment of HVAT for the period of 01.04.2014 to 30.06.2017 and order to direct respondent to assist the process of removing lien from complainant's bank by providing NOC for the same.**
- G.VI Hold the respondent guilty of indulging into unfair practices and providing deficient services to the complainants and award a compensation Rs.30,00,000 with the interest at MCLR rate of SBI plus 2% per annum from the actual first date of payment of amounts till realization.**
- G.VII Award pendent lite interest @18% per annum from the first date of payment of amounts till realization.**
32. The above mentioned reliefs no. G.II, G.III, G.IV, G.V, G.VI and G.VII as sought by the complainants are being taken together as the findings in one relief will affect the result of the other reliefs and these reliefs are interconnected.
33. That the financial liabilities between the allottee and the promoter comes to an end after the execution of the conveyance deed. The complainants could have asked for the claim before the conveyance deed got executed between the parties. Therefore, after execution of the conveyance deed the complainant-allottee cannot seek refund of charges other than statutory benefits, if any pending. Once the conveyance deed is executed and accounts

have been settled, no claims remain. So, no directions in this regard can be effectuated at this stage.

G.VIII Direct the respondent to pay Rs.50,000/- as litigation charges.

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

H. Directions of the authority

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


- i. The respondent/promoter is directed to pay delayed possession charges at the prescribed rate of interest 11 % per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 14.11.2016 (inadvertently mentioned in the proceeding of the day 13.08.2016 as 14.06.2016, which is without adding grace period of 5 months) till the date of offer of possession i.e., 13.12.2018 plus two months or the date of handing over whichever is

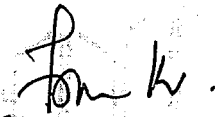


earlier as per proviso to section 18(1) of the Act read with rule 15 of the rules after adjusting the amount if any, paid towards the delay in handing over the possession of the unit to the complainants.

- ii. The respondent shall also adjust delayed compensation, if any, already paid to the complainant.
 - iii. The respondent shall not charge anything from complainant which is not part of buyer's agreement.
36. Complaint stands disposed of.
37. File be consigned to registry.


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.08.2024

HARERA
GURUGRAM