

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

Date of decision: 20.08.2024

<b>NAME OF THE BUILDER</b>		<b>M/s Emaar Mgf Land Ltd.</b>	
<b>PROJECT NAME</b>		<b>"Gurgaon Green"</b>	
<b>S. No.</b>	<b>Case No.</b>	<b>Case title</b>	<b>APPEARANCE</b>
1	CR/5782/2022	Amba Aircon Pvt. Ltd. V/s Emaar MGF Land Ltd.	Adv. Sanjeev Sharma (Complainant)
2	CR/5888/2022	Manish Bhatnagar V/s Emaar MGF Land Ltd.	Adv. Dhruv Rohtagi (Respondent)

**CORAM:**

Shri Arun Kumar

Shri Vijay Kumar Goyal

Shri Ashok Sangwan

**Chairman**

**Member**

**Member**

**ORDER**

1. This order shall dispose of both the complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, 'Emerald Hills Floor' being developed by the same respondent promoters i.e., M/s Emaar MGF Land Ltd. The terms and conditions of the

builder buyer's agreement that had been executed between the parties inter se are also almost similar. The 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, seeking award for delay possession charges and cost of litigation.

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

1 S. no.	2 Complaint no. / Title/ Date of Filing / Reply	3 Unit no. and area	4 Date of builder buyer agreement	5 Due date of possession, Offer of Possession and Occupation certificate	6 Total sale consideration and amount paid	7 Relief sought
1)	CR/5782/2022  Amba Aircon Pvt. Ltd. V/S Emaar MGF Land Ltd.  DOF- 29.08.2022  Reply- 14.06.2023	EPS-FF-008  (Page no.31 of the reply)	15.11.2010  (page no.30 of the reply)	Due dt. of possession 15.09.2013 (including grace period) (inadvertently mentioned in the proceeding of the day as 15.12.2013)  Conveyance Deed- 04.07.2018  (Page no.81 of reply)	01.02.2018  (page 66 of reply)  TC- Rs.28,73,563/- (as per SOA dt. 05.06.2023)  AP- Rs.29,09,143/- (as per SOA dt. 05.06.2023)	i. Direct the respondent to pay interest on the amount paid by the complainant from due date of possession till actual handing over of possession. ii. Direct the respondent to pay a sum of Rs.50,000/- to the complainants as cost of litigation.

2)	CR/5888/2022  Manish Bhatnagar V/S Emaar MGF Land Ltd.  DOF-29.08.2022  Reply-14.06.2023	EP-FF-031  (Page no.34 of reply)	03.07.2010  (page 33 of the reply)  Conveyance Deed-04.07.2018  (Page 85 of reply)	Due dt. of possession - 03.05.2013 (including grace period)  (inadvertent by due date of possession was mentioned as 03.07.2013 in proceedings dated 20.08.2024) OP dated 15.02.2018 (pg.72 of reply) OC dated 03.07.2020 (pg.62 of reply)	15.02.2018  (page 72 of reply)  TC- Rs. 49,40,577/- (as per SOA dt. 09.06.2023 at pg.105 of reply)  AP- Rs. 49,85,607/- (as per SOA dt. 09.06.2023 at pg.105 of reply)	i. Direct the respondent to pay interest on the amount paid by the complainant till the amount paid by the complainant till actual physical possession. ii. Direct the respondent to pay a sum of Rs.50,000/- to the complainant as cost of litigation.
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Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing complaint
TC	Total consideration
BSP	Basic sale price
AP	Amount paid by the allottee(s)
OP	Offer of Possession
SOA	Statement of Account
Dt.	dated

- The aforesaid complaints were filed against the promoter on account of violation of the agreement to sell and allotment letter against the allotment of units in the upcoming project of the respondent/builder and for not handing over the possession by the due date, seeking award of possession along with delayed possession charges.
- The delay possession charges to be paid by the promoter is positive obligation under proviso to section 18 (1) of the Act in case of failure of the promoter to hand over possession by the due date as per builder buyer's agreement.

6. It has been decided to treat the aforesaid complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
7. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/5782/2022 titled as Amba Aircon Pvt. Ltd. V/S Emaar MGF Land Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua the reliefs sought by the complainant-allottees.

**A. Unit and project related details**

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

**CR/5782/2022 titled as Amba Aircon Pvt. Ltd. V/S Emaar MGF Land Ltd.**

Sr. No.	Particulars	Details
1.	Name of the project	Emerald Plaza, Sector 65, Gurugram, Haryana
2.	Total area of the project	3.963 acres
3.	Nature of the project	Commercial colony
4.	DTCP license no.	10 of 2009 dated 21.05.2009
	Validity of license	20.05.2019
	Licensee	Logical Developers Pvt. Ltd. and 8 others

	Area for which license was granted	102.7412 acres
5.	Project registered/not registered	Not registered
6.	Unit no. and size	EPS-FF-008, admeasuring 344.06 sq. ft. [annexure R3, page 31 of reply]
7.	Provisional allotment letter dated	05.07.2010 [annexure R2, page 26 of reply]
8.	Date of execution of buyer's agreement	15.11.2010 [annexure R3, page 30 of reply]
9.	Possession clause	<p><b>16. POSSESSION</b></p> <p><b>(a) Time of handing over the possession</b></p> <p><i>That the possession of the Retail Spaces in the Commercial Complex shall be delivered and handed over to the Allottee(s), <u>within thirty (30) months of the execution hereof</u> subject however to the Allottee(s) having strictly complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and all amounts due and payable by the Allottee(s) under this Agreement having been paid in time to the Company. The Company shall give notice to the Allottee(s), offering in writing, to the Allottee to take possession of the Retail Spaces for his occupation and use ("Notice of Possession").</i></p> <p><b>ii. The Allottee(s) agrees and understands that the Company shall be entitled to <u>a grace period of one hundred and twenty (120) days over and above the period more</u></b></p>

		<u>particularly specified here-in-above in sub-clause (a)(i) of clause 16, for applying and obtaining necessary approvals in respect of the Commercial Complex.</u>  (emphasis supplied)
10.	Due date of possession	15.05.2013 [as per possession clause 30 months from the date of execution i.e., 15.11.2010 (Without grace period)]  15.09.2013 [with grace period of 120 days as per possession clause.]  (inadvertently mentioned in the proceeding of the day 20.08.2016 as 15.12.2013)
11.	Total consideration  [As per statement of account dated 05.06.2023 at page 121 of reply]	Rs. 28,73,563/-  [As per statement of account dated 05.06.2023 at page 121 of reply]
12.	Total amount paid by the complainant. [as per statement of account dated 05.06.2023 at page 122 of reply]	Rs. 29,09,143/-  [as per statement of account dated 05.06.2023 at page 122 of reply]
13.	Occupation certificate granted on [pg.64 of reply]	08.01.2018  [pg.64 of reply]
14.	Offer of possession	01.02.2018  [annexure R6, page 66 of reply]
15.	Unit handover letter dated	12.06.2018  [annexure R7, page 73 of reply]
16.	Conveyance deed executed on	04.07.2018  [annexure R9, page 81 of reply]

17.	Delay compensation already paid by the respondent in terms of the buyer's agreement as per statement of account dated 05.06.2023 at page 122 of reply	Rs. 1,19,727/-
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**B. Facts of the complaint**

9. The complainants have made the following submissions in the complaint:
- i. That upon the representation by the respondent and advertisement done in said behalf, the complainant purchased a commercial complex no. EPS-FF-008, admeasuring 344.06 sq. ft. in the project i.e., Emerald Plaza located at sector 65, Gurgaon, Haryana. On the inducement that the possession of the unit purchased shall be handed over on time with all amenities as promised.
  - ii. That as per the flat buyer agreement which was executed between the parties on 15.11.2010, and statement of account as on 15.09.2010 the total sale consideration of the unit was agreed to be Rs. 28,13,563/- As per clause 16(a) of the agreement the possession was to be given by May 2013.
  - iii. That the respondent did not offer the possession and on repeated request he offered the possession on 01.02.2018. The handover of the possession was done on 12.06.2018 and the conveyance deed was executed on 04.07.2018.
  - iv. That Act of 2016 is a complete code in itself with clear intention of the legislation to regulate the real estate sector while protecting the interest of allottees. No limitation has been prescribed under the act, for filing a complaint under section 31. The RERA Act of 2016 prescribed the period of limitation wherever legislation thought it should be prescribed such

as section 44(2) and section 58(1) of the act. The legislature in its wisdom has not incorporated any period of filing complaint under section 31. Moreover in view of below mentioned judicial precedents the limitation act 1963 applies only to proceedings before courts and not quasi-judicial authorities. Complaint before the Authority is not a complaint before court and may be for this purpose the act has barred the jurisdiction of civil court u/s 79 of the Act of 2016.

v. That at the main dispute and contention of application and reply is law of limitation. The respondent builder/promoter did not get itself registered under HRERA, against whom notices u/s 59 of the act are still pending issued by the Hon'ble authority on account of being on-going project described under rule 2(o) of the HRERA rules, where development works are yet to be completed and no completion certificate under section 2(q) has been issued by the competent authority till date. Unless completion certificate is issued by the competent authority the project remains ongoing and limitation shall start running from the date when such completion certificate is issued as the cause of action to file complaint stops when certificate is issued.

vi. Written submission has been filed by the complainant and the same has been taken on record and perused further.

**C. Relief Sought by the complainant:**

10. That complainant has sought the following relief(s):

- i. Direct the respondent to pay interest on the amount paid by the complainant from the due date of possession till actual handing over of possession.
- ii. Direct the respondent to pay a sum of Rs.50,000/- to the complainants as cost of litigation.



11. 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 pleas guilty or not to plead guilty.

**D. Reply by the respondent:**

12. The respondent contested the complaint on the following grounds:

- i. That the complainant had approached the respondent and expressed an interest in booking a commercial unit in the commercial complex developed by the respondent and booked the unit in question, bearing number EPS-FF-008, situated in the project developed by the respondent, known as "emerald plaza retail" at Sector-65, Gurugram, Haryana. Thereafter the complainant vide application form dated 18.05.2010 applied to the respondent for provisional allotment of a unit bearing number EPS-FF-008 in the project. The complainant consciously and wilfully opted for a payment plan as suited to her for remittance of the sale consideration for the unit in question, and further represented to the respondent that the complainant shall remit every instalment on time as per the payment schedule. That the respondent issued the provisional allotment letter dated 05.07.2010 to the complainant.
- ii. That subsequently, the respondent sent the buyer's agreement to the complainant, which was executed between the parties on 15.11.2010. That as per clause 16(a) of the buyer's agreement provides that the possession of the retail spaces in the commercial complex shall be delivered and handed over to the allottee(s), within 30 months of the execution hereof.
- iii. That it is reiterated that clause 18 of the buyer's agreement provides that compensation for any delay in delivery of possession shall only be given

to such allottees who are not in default of their obligations envisaged under the agreement and who have not defaulted in payment of instalments as per the payment plan incorporated in the agreement.

- iv. That it needs to be highlighted that the respondent completed construction and had submitted an application on 26.05.2017 for grant of occupation certificate before the concerned statutory authority. The occupation certificate has been granted by the concerned department vide memo no. ZP-560-A/SD(BS)/2017/528 dated 08.01.2018.
- v. That to take into reckoning that the complainant was offered possession of the unit in question through the letter of offer of possession dated 01.02.2018. The unit in question was handed over to the complainant on 12.06.2018 vide the unit handover letter. The Deed of conveyance was executed on 04.07.2018. The complainant had also executed an indemnity cum undertaking dated 26.04.2018.
- vi. That upon signing the unit handover letter, the complainant specifically and expressly agreed that the liabilities and obligations of the respondent as enumerated in the allotment letter or the buyer's agreement stood satisfied.
- vii. That after execution of the unit handover letter dated 12.06.2018, obtaining of possession of the unit in question and execution of the deed of conveyance dated 04.07.2018, the complainant is left with no right, entitlement or claim against the respondent. The transaction between the complainant and the respondent stands concluded and no right or liability can be asserted by the respondent or the complainant against the other. The instant complaint is a gross misuse of process of law.
- viii. That it is submitted that the construction of the tower in which the unit in question is situated has been completed by the respondent. The

respondent has already delivered possession of the unit in question to the complainant. Therefore, there is no default or lapse on the part of the respondent and there is no equity in favour of the complainant. That it needs to be highlighted that respondent has paid an amount of Rs.1,28,351/- as benefit on account of anti-profiting and Rs.1,00,000/- onetime payment rebate.

ix. That all the demands that have been raised by the respondent are strictly in accordance with the terms and conditions of the buyer's agreement duly executed and agreed to between the parties. The respondent cannot regulate the functioning of the concerned statutory authority. Therefore, no default or lapse can be attributed to the respondent. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainant are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

x. That it is the complainant who is in clear breach of the terms of the buyer's agreement by not remitting the outstanding amount and by not taking the possession of the said unit in question. The reliefs sought in the false and frivolous complaint are barred by estoppel. It is relevant to submit that the conveyance deed of the unit in question had already been executed in favour of the complainant as early as on 04.07.2018, whereas the present complaint has been filed on 18.08.2022, i.e. after almost 4 years 1 month and 14 days. The lack of bonafide of the complainant is apparent that after conclusion of the entire transaction on the execution of the conveyance deed and the completion of all obligations of the respondent, it chose to remain silent for such a long period and has approached this authority to extort money. The present complaint is not

maintainable in view of the fact that the conveyance deed of the unit in question already stands executed in favour of the complainant, almost 4 years prior to the filing of the present complaint, without there being any protest, demand of compensation, and allegation of coercion, undue influence or misrepresentation. The transaction between the complainant and the respondent stands concluded upon the execution of the conveyance deed and the respondent is absolved of all or any liabilities, except for as in terms of Section 11(4) of the Real Estate (Regulation and Development) Act, 2016.

- xi. That it is the contention of the complainant that the limitation act is not applicable. However, it is pertinent to submit that non-applicability of the limitation act, shall lead to a situation, where the allottees, who have taken the possession, executed the conveyance deed and never raised any grievance in respect of the compensation awarded or not awarded, shall come forward after indefinite period to raise claims against the promoters.
- xii. Written submission has been filed by the respondent and the same has been taken on record and perused.
- xiii. All other averments made in the complaints were denied in toto.
13. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the complainants.

**E. Jurisdiction of the authority**

14. The respondent has raised preliminary objection regarding jurisdiction of authority to entertain the present complaint. The authority observes

that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

**E. I Territorial jurisdiction**

15. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

**E. II Subject matter jurisdiction**

16. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**Section 11(4)(a)**

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

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

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

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

**F. Objections raised by the respondent:**

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

18. The respondent stated that the complainants have alleged that the possession of the unit was to be given not later than February 2018 and therefore cause of action, if any, accrued in favour of the complainants in 28018. The transaction between the parties stands concluded upon the execution of conveyance deed as the same was executed in favour of the complainant on 04.07.2018.
19. 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.
20. 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.

21. 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.
22. 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.
23. After consideration of all the facts and circumstances, the authority holds that even after execution of the conveyance deed, the complainants-allottee cannot be precluded from his right to seek delay possession charges from the respondent-promoter.

**F.II 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. The 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.

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 the present matter the cause of action arose on 01.02.2018 when the offer of possession was made by the respondent to the complainant. The complainant has filed the present complaint on 29.08.2022 which is 4 years 6 months 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 14.01.2023. 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.

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

**G.I Direct the respondent to pay interest on the amount paid by the complainant till the amount paid by the complainant till actual physical possession.**

27. 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."*

28. Clause 16 of the buyer's agreement dated 15.11.2010 provides for handing over of possession and is reproduced below:

**16. POSSESSION**

**(a) Time of handing over the possession**

i. That the possession of the Retail Spaces in the Commercial Complex shall be delivered and handed over to the Allottee(s), **within thirty (30) months of the execution hereof**, subject however to the Allottee(s) having strictly complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and all amounts due and payable by the Allottee(s) under this Agreement having been paid in time to the Company. The Company shall give notice to the Allottee(s), offering in writing, to the Allottee to take possession of the Retail Spaces for his occupation and use ("Notice of Possession").

ii. The Allottee(s) agrees and understands that the Company shall be entitled to **a grace period of one hundred and twenty (120) days over and above the period more particularly specified here-in-above in sub-clause (a)(i) of clause 16, for applying and obtaining necessary approvals in respect of the Commercial Complex.**

29. **Due date of possession and admissibility of grace period:** The promoter has proposed to handover the possession of the said unit within 30 months from the date of execution and it is further provided in agreement that promoter shall be entitled to a grace period of 120 days for applying and obtaining completion certificate/occupation certificate in respect of said floor and/or project. The execution date was 15.11.2010. The period of 30 months expired on 15.05.2013. Further, the complainant-builder has submitted that a grace period of 120 days may be allowed to it for applying and obtaining the competition certificate/occupation certificate in respect of the unit and/or the project in terms of order dated 08.05.2023 passed by the Hon'ble Appellate Tribunal in **Appeal No.433 of 2022 titled as Emaar MGF Land Limited**

**Vs. Babia Tiwari and Yogesh Tiwari** wherein it. Has been held that if the allottees wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining occupation certificate. The relevant portion of the order dated 08.05.2023, is reproduced as under:

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

30. 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 15.09.2013 including grace period of 120 days.

31. **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.
32. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 20.08.2024 is @ 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e.11.10%.
33. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the Authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per agreement. By virtue of clause 16 of the buyer's agreement executed between the complainant and respondent on 15.11.2010, the possession of the subject unit to handover within thirty months from the date of execution i.e., 15.11.2010 along with grace period of 120 days, for applying and obtaining the completion certificate/occupation certificate in respect of the unit and/ or the project i.e., 15.09.2013 (inadvertently mentioned in the proceeding of the day 20.08.2016 as 15.12.2013). Therefore, the due date of handing over of possession come out to be 15.09.2013. The occupation certificate was granted by concerned authority on 08.01.2018 and thereafter the possession of the subject unit was offered to the complainants on 01.02.2018. Therefore, the authority allows DPC as per the buyer's agreement i.e., 15.11.2010 from due date of



possession i.e., 15.09.2013 till the offer of possession i.e. 01.02.2018 plus 2 months or actual handing over of possession, whichever is earlier. 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 15.11.2010 to handover the possession within the stipulated period.

34. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 08.01.2018. The respondent offered the possession of the unit in question to the complainant on 01.02.2018. 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 12.06.2018. 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.
35. 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 @11.10% p.a. w.e.f. from the due date of possession i.e., 15.09.2013 till the date of offer of possession i.e.,



01.02.2018 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 pay a sum of Rs.50,000/- to the complainants as cost of litigation.**

36. The complainant is 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.

**H. Directions of the Authority:**

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

- i. The respondent/promoter is directed to pay delayed possession charges at the prescribed rate of interest 11.10 % per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 15.09.2013 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 respondent is further 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.
38. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
39. Complaint as well as applications, if any, stands disposed off accordingly.
40. File be consigned to the registry.

  
(Ashok Sangwan)  
Member

  
(Vijay Kumar Goyal)  
Member

  
(Arun Kumar)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.08.2024