

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

Complaint no. : 5605 of 2022
Date of filling : 25.08.2022
Date of decision : 13.08.2024

Mr. Prakash Chinnaswamy Koramangala
Regd. Address at: 19 Sree Bhanashankari Krupa, 80 ft.
Road, Behind East Point College, 2nd Cross, Kalayan
Nagar, Banglore 560043 Karnataka

Complainant

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 J.K Dang and Shri. Ishaan Dang

Counsel for Complainant
Counsel for Respondent

HARERA
ORDER
GURUGRAM

1. The present complaint dated 25.08.2022 has been filed by the complainant/allottee 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 complainant, 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-20-1202, 12 th floor, building no. 20 measuring 1650 sq. ft. [page 30 of complaint]
3.	Provisional allotment letter	27.01.2013 [page 21 of complaint]
4.	Date of execution of buyer's agreement	27.05.2013 [page 27 of complaint]
5.	Possession clause	<p>14. POSSESSION</p> <p>(a) Time of handing over the Possession</p> <p><i>Subject to terms of this clause and barring force majeure conditions, subject to the Allottee 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) months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project.</i></p> <p>(Emphasis supplied) [page 43 of complaint]</p>
6.	Date of start of construction as per statement of account	16.06.2013

	dated 18.10.2022 at page 140 of reply	
7.	Due date of possession	16.06.2016
8.	Total consideration as per statement of account dated 18.10.2022 at page 140 of reply	₹ 99,82,767/-
9.	Total amount paid by the complainant as per statement of account dated 18.10.2022 at page 140 of reply	₹ 1,01,70,096/-
10.	Occupation certificate	30.05.2019 [page 148 of reply]
11.	Offer of possession	31.05.2019 [page 151 of reply]
12.	Unit handover letter	05.10.2020 [page 156 of reply]
13.	Delay compensation paid to the complainant as per statement of account dated 18.10.2022 at page 140 and 141 of reply	₹ 1,88,575/-

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
- 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. That the respondent while launching and advertising any new housing project always commits and promises to the targeted consumer that their dream home will be completed and delivered to them within the time agreed initially in the agreement while selling the dwelling unit to them. They also assured to the consumers like complainant

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 respondent was very well aware of the fact that in today's scenario looking at the status of the construction of housing projects in India, especially in NCR, the key factor to sell any dwelling unit is the delivery of completed house within the agreed and promised timelines and that is the prime factor which a consumer would consider while purchasing his/her dream home. Respondent, therefore used this tool which is directly connected to emotions of gullible consumers, in its marketing plan and always represented and warranted to the consumers that their dream home will be delivered within the agreed timelines and consumer will not go through the hardship of paying rent along-with the installments of home loan like in the case of other builders in market.
- iii. That somewhere in the month of January 2012, the respondent through its business development associate approached the complainant with an offer to invest and buy a flat in the proposed project of respondent, which the Respondent was going to launch the project namely "Gurgaon Greens" in the Sector-102, Gurugram. On 07.02.2012 complainant had a meeting with respondent at the respondents branch office "Emaar Business Park, Mg Road, Sikanderpur Chowk, Sector 28, Gurugram 122002" where the respondent explain the project details of "Gurgaon Greens" and highlight the amenities of the project (Gurgoan Greens) like Joggers park, joggers track, rose garden, 2 swimming pool, amphitheater and many more and told that tower 16, 07, 20, and 22 is only available for advance booking and each tower will have G+13 floors and on every 13th floor of these towers there will be a penthouse which possessing floor no 13th and 14th floor, on relying on these details complainant enquire the availability of flat on 12th floor in tower 20 which was a unit

consisting area 1650 sq ft. respondent represented to the complainant that the respondent is a very ethical business house in the field of construction of residential and commercial project and in case the complainant would invest in the project of respondent then they would deliver the possession of proposed flat on the assured delivery date as per the best quality assured by the respondent. The respondent had further assured to the complainant that the respondent has already processed the file for all the necessary sanctions and approvals from the appropriate and concerned authorities for the development and completion of said project on time with the promised quality and specification. The respondent had also shown the brochures and advertisement material of the said project to the complainant given by the respondent and assured that the allotment letter and builder/buyer agreement for the said project would be issued to the complainant within one week of booking to made by the complainant. The complainant while relying upon those assurances and believing them to be true, complainant booked a residential flat bearing no. 1202 on 12th floor in tower - 20 in the proposed project of the respondent measuring approximately super area of 1650 sq. ft. (153.29 sq. meter) in the township to be developed by respondent. Accordingly, the complainant have paid Rs.7,50,000/- through cheque bearing no.591279 dated 07.02.2012 & cheque bearing no.697554 dated 13.02.2012 as booking amount on 07.02.2012.

- iv. That in the said application Form, the price of the said flat was agreed at the rate of Rs.4703/- per sq. ft. mentioned in the said application form. At the time of execution of the said application form, it was agreed and promised by the respondent that there shall be no change, amendment or variation in the area or sale price of the said flat from the area or the price committed by the respondent in the said application form or agreed otherwise.

- v. That approximately after one year on 27/01/2013 the respondent issued a provisional allotment letter which consisted very stringent and biased contractual terms which are illegal, arbitrary, unilateral and discriminatory in nature, because every clause of agreement is drafted in a one-sided way and a single breach of unilateral terms of provisional allotment letter by complainant, will cost him forfeiting of 15% of total consideration value of unit. Respondent exorbitantly increased the net consideration value of flat by adding EDC, IDC and PLC and when Complainant opposed the unfair trade practices of respondent they inform that EDC, IDC and PLC are just the government levies and they are as per the standard rules of government and these are just approximate values which may come less at the end of project and same can be proportionately adjusted on prorata basis and 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. Complainant opposed these illegal, arbitrary, unilateral and discriminatory terms of provisional allotment letter but as there is no other option left with complainant because if complainant stop the further payment of installments, then in that case respondent forfeit 15% of total consideration value from the total amount paid by complainant. Thereafter on 27th May 2013 builder buyer agreement was executed on similar illegal, arbitrary, unilateral and discriminatory terms narrated by respondent in provisional allotment letter.
- vi. That as per the clause - 14 of the said flat buyer's agreement dated 27th May 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.
- vii. That from the date of booking 7th February 2012 and till 31st May 2019, the respondent had raised various demands for the payment of installments on

complainant towards the sale consideration of said flat and the complainant have duly paid and satisfied all those demands as per the flat buyers agreement without any default or delay on their part and have also fulfilled otherwise also their part of obligations as agreed in the flat buyers agreement. The complainant were and have always been ready and willing to fulfill their part of agreement, if any pending.

- viii. That as per schedule of payments of buyer's agreement the sales consideration for said flat was Rs.92,58,383/- exclusive of service tax and GST, but later at the time of possession respondent add Rs.75,076/- in sale consideration and increase Sale consideration to Rs.93,33,459/- without any reason for the same and respondent also charge IFMS Rs.82,500/- separately, whereas IFMS charges already included in Sale Consideration and that way respondent charge IFMS twice from Residents. Respondent Increased the sale consideration by Rs.1,57,576/- (Rs.75076 + Rs.82500) 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.
- ix. 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 11.06.2022, issued by the respondent, upon the request of the complainant, the complainant have already paid Rs.99,81,521/- towards total sale consideration and applicable taxes as on today to the respondent as demanded time to time and now nothing is pending to be paid on the part of complainant. Although the respondent charges Rs.1,57,576/- extra from complainant.
- x. That on the date agreed for the delivery of possession of said unit as per date of booking and later on according to the flat buyer's agreement is 16th June 2016, the complainant had approached the respondent and its officers for inquiring the status of delivery of possession but none had bothered to provide any

satisfactory answer to the complainant about the completion and delivery said flat. The complainant thereafter kept running from pillar to post asking for the delivery of his home but could not succeed in getting any reliable answer.

- xi. 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. It has also cleared the air on the fact that all the promises made by the respondent at the time of sale of involved flat were fake and false. The respondent had made all those false, fake, wrongful and fraudulent promises just to induce the complainant to buy the said flat on basis of its false and frivolous promises, which the respondent never intended to fulfill. 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.
- xii. 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 31st May 2019 with stringent condition to pay certain amounts which are never be a part of agreement. As on 31st May 2019 project was delayed approx. three years. At the time of offer of possession builder did not adjust the penalty for delay possession as per RERA Act 2016. In case of delay payment, builder charged the penalty @24% per annum and in delay in possession builder gave Rs.7.5/- sq.ft. only, this is illegal, arbitrary, unilateral and discriminatory. Respondent also demanded an Indemnity-cum-undertaking along with final payment, which is illegal and unilateral demand. Respondent did not even allow complainant to visit the property at "Gurgaon Greens" before clearing the final demand raised by respondent along with the Offer of possession. 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.2,52,929/-

on the pretext of future liability against HVAT for the period of (01-April-2014 to 30-June-2017) which is also a unfair trade practice. Complainant informed the respondent about his unfair calculation of delay possession penalty and also enquires the construction status of rest of project through telephonically, but nothing changed, and respondent does not want to answer any enquiry before getting complete payment against his final demand. Respondent left no other option to complainant, but to pay the payment two-year maintenance charges Rs.1,44,540/- and submit a fixed deposit of Rs.2,52,929/- with a lien marked in favour of Emaar MGF Land Limited and Rs.4,27,750/- towards e-Stamp duty and Rs. 45,000/- towards registration charges of above said unit no. 1202, Tower 20, Gurgaon Greens in addition to final demand raised by respondent along with the offer of possession. Respondent give physical handover of aforesaid property on date 05.0.2020.

- xiii. That after taking possession of flat on 05.10.2020, 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 07.02.2012, area of central park was told 8 acres but in reality it is very small as compare to 8 acre and respondent also build car parking underneath 'Central Park'. Most of the amenities are nowhere exist in project whereas it was highlight at the time of booking of flat. Respondent did many structural changes and cut down on the internal features of project, based on which respondent sold this flat to complainant and gained undue amount of profit on the cost of complainant and other buyers of the unit in project Gurgaon Greens. Respondent did not even confirm or revised the exact amount of EDC, IDC and PLC after considering the structural changes neither they provide the receipts or documentary records showing the exact amount of EDC, IDC and PLC paid to government and Respondent did not even adjust the surplus amount of EDC, IDC and PLC charged from complainant and other buyers.

- xiv. 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.
- xv. Respondent did not provide the final measurement of above said unit No. 1202, tower no. 20, "Gurgaon Greens". Respondent charge 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 was going to handover to complainant.
- xvi. 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 16th June 2016, therefore, the tax which has come into existence after the due date of possession (16th June, 2016) of flat, this extra cost should not be levied on complainant, since the same would not have fallen on the complainant if respondent had offer the possession of flat within the time stipulated in the builder buyer agreement.
- xvii. On 31.05.2019 complainant inform respondent telephonically that respondent is creating anomaly by not compensating the complainant for delay possession charges at the rate of interest specified in RERA Act 2016. Complainant makes it clear to respondent that, if respondent does not compensate the complainant for delay possession interest, then complainant will approach the appropriate forum to get redressal. Whenever complainant enquire about the delay possession charges, respondent making excuse of getting approval from directors, but till date respondent did not credit the delay possession interest.
- xviii. 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 unfair as well as illegal. 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. The respondent has also acted fraudulently and arbitrarily by inducing the complainant to buy the said flat basis its false and frivolous promises and representations about the delivery timelines aforesaid housing project.

- xix. 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. That as on 31.05.2019, it has been a total delay of 3 years.
- xx. That the cause of action accrued in favour of the complainant and against the respondent on 07.02.2012 when the complainant had booked the said flat 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.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- I. Direct the respondent to pay interest at the rate of 18% on account of delay in offering possession on Rs.99,81,521/-, paid by the complainant as sale consideration of the said flat from the date of payment till the date of delivery of possession.
 - II. Direct the respondent to return Rs.1,57,576/-, amount unreasonably charged by respondent by increasing sale price after execution of buyer's agreement between respondent and complainant.
 - III. Direct the respondent to return entire amount paid as GST Tax by complainant between 01.07.2017 to 24.07.2019.
 - IV. Direct the complainant's bank to remove the lien marked over Fixed deposit of Rs.2,52,929/- in favour of respondent on the pretext of future payment of HVAT for the period of (01.04.2014 to 30.06.2017). and also order to direct respondent to assist the process of removing lien from complainant's bank by providing NOC for the same.
 - V. Direct the respondent to pay an amount of Rs.55,000/- to the complainant as cost of the present litigation.

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 present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint are beyond the purview of this Authority and can only be adjudicated by the civil court. The present complaint deserves to be dismissed on this ground alone.
 - ii. That the complainant has 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 27.05.2013, as shall be evident from the submissions made in the following paras of the present reply. The respondent craves leave of this Authority to refer to and rely upon the terms and conditions set out in the buyer's agreement, in detail at the time of the hearing of the present complaint, so as to bring out the mutual obligations and the responsibilities of the respondent as well as the complainant thereunder.
 - iii. That the complainant is estopped by her own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint.
 - iv. That the complainant had approached the respondent and expressed their interest in booking an apartment in the residential group housing project being developed by the respondent known as "Gurgaon Greens" situated in Sector 102, Village Dhankot, Tehsil & District Gurugram. Prior to making the booking, the complainant conducted extensive and independent enquiries with regard to the

project and it was only after the complainant were fully satisfied about all aspects of the project, that the complainant took an independent and informed decision, uninfluenced in any manner by the respondent, to book the apartment in question.

- v. That the complainant were provisionally allotted apartment no GGN-20-1202, admeasuring 1650 sq. ft. approx. saleable area, in the said project. The complainant had opted for an instalment/construction linked payment plan. The buyer's agreement was executed between the complainant and the respondent on 27.05.2013, willingly and consciously after duly understanding and accepting all the terms and conditions thereof.
- vi. That the complainant had opted for an instalment/construction linked payment plan. Although the complainant had agreed and undertaken to make timely payments in accordance with the payment schedule, but the complainant were irregular in payment of instalments. The respondent issued notices and reminders for payment calling upon the complainant to make payment as per the payment plan.
- vii. That it is pertinent to mention herein that as per the terms and conditions of the buyers agreement, the complainant/alottee was under a contractual obligation to make timely payment of all amounts payable under the buyers 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 buyers agreement.
- viii. That in the meanwhile, the respondent registered the project under the provisions of the Act. The project had been initially registered till 31.12.2018. Subsequently, the registration of the project was extended till 31.12.2019. In the meanwhile, the respondent completed construction of the tower in which the apartment in question is situated and applied for the occupation certificate in

respect thereon on 31.12.2018 the same was issued by the competent Authority on 30.05.2019.

- ix. 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. As far as the respondent is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authority for obtaining of the occupation certificate. No fault or lapse can be attributed to the respondent in the facts and circumstances of the case. 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
- x. 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 timelines as per the buyer's agreement. This clearly shows that the present complaint is just an afterthought for the purposes of extorting illegal gains by arm twisting the respondent and abusing the due process of law.
- xi. That upon receipt of the occupation certificate, the respondent offered possession of the apartment in question to the complainant vide letter dated 31.05.2019. The complainant were called upon to remit balance amount as per the attached statement and also to complete the necessary formalities and documentation so as to enable the Respondent to hand over possession of the apartment to the complainant.

- xii. That the complainant took possession of the apartment in question on 18.07.2019. 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. The present complaint is nothing but a gross misuse of process of law.
- xiii. That at the time of taking possession of the apartment, the complainant have admitted and acknowledged themselves to be fully satisfied with regard to the measurements, location, direction, developments et cetera of the unit and also admitted and acknowledged that the complainant do not have any claim of any nature whatsoever against the respondent and that upon acceptance of possession, the liabilities and obligations of the respondent as enumerated in the allotment letter/buyer's agreement, stand fully satisfied. Thus, the complainant are estopped from filing the present complaint. The institution of the present complaint is nothing but an afterthought. That it is submitted that the respondent has duly fulfilled its contractual obligations under the buyer's agreement and therefore the institution of the present false and frivolous complaint is absolutely unjustified and unwarranted.
- xiv. That 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 apartment 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.
- xv. That it is most respectfully submitted that the contractual relationship between the complainant and the respondent is governed by the terms and conditions of the buyer's agreement dated 27.05.2013. Clause 31 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 apartment within a period of 60 days from the date of issuance of the occupation certificate by the competent authority. The occupation certificate was issued by the competent authority on 30.05.2019 and the offer of possession was made one day later, i.e on 31.05.2019. Thus, there is no delay in so far as the respondent is concerned.

xvi. That as has been submitted in the preceding paras of the present reply, the respondent had completed construction of the apartment/tower by December 2018 and had applied for issuance of the occupation certificate on 31.12.2018. The occupation certificate was issued by the competent authority on 30th May 2019. It is respectfully submitted that after submission of the application for issuance of the occupation certificate, the respondent cannot be held liable in any manner for the time taken by the competent authority to process the application and issue the occupation certificate. Thus, the said period taken by the competent authority in issuing the occupation certificate as well as time taken by Government/Statutory Authorities in according to approvals, permissions etc., necessarily have to be excluded while computing the time period for delivery of possession.

xvii. That thus, it is evident that the entire case of the complainant is nothing but a web of lies and falsehoods and the baseless and frivolous allegations made against the respondent are nothing but an afterthought. The respondent has duly completed construction of the apartment in question and has also offered possession of the same within the period of extended registration under the Act, well within the agreed timelines as provided under the buyer's agreement. There is no default or lapse on the part of the respondent.

xviii. That it is submitted that the interest for the alleged delay demanded by the complainant is beyond the scope of the buyer's agreement. The complainant

cannot demand any interest or compensation beyond or contrary to the agreed terms and conditions between the parties.

- xix. 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 Authority. The present complaint 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.
- xx. That in 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. Nevertheless, it is pertinent to mention herein that compensation amounting to Rs.1,88,575/- was also credited to the complainant although in accordance with the buyer's agreement, the complainant, being in default of the buyer's agreement is/was not entitled to any compensation from the respondent. Further an amount of Rs.57,840/- was credited towards anti-profiting and EPR of Rs 7,266/- was also credited to the complainant.
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 complainant at a later stage.

F. Findings on the relief sought by the complainant.

- F.I Direct the respondent to pay interest at the rate of 18% on account of delay in offering possession on Rs.99,81,521/-, paid by the complainant as sale consideration of the said flat from the date of payment till the date of delivery of possession.

12. In the present complaint, the complainant intends to continue with the project and is 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.”

13. Clause 14 of the buyer’s agreement dated 27.05.2013 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, subject to the Allottee 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) months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project.**

14. **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 16.06.2013 as per statement of account. The period of 36 months expired on 16.06.2016. Further, the complainant-builder has submitted that a grace period of 5 months may be allowed to it for applying and obtaining the competition certificate/occupation certificate in respect of the unit and/or the project in terms of order dared 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."

15. 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 16.11.2016 including grace period of 5 months.

16. **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.

17. 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%.
18. 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 27.05.2013, the possession of the subject unit to handover within thirty-six months from the date of start of construction i.e., 16.06.2013 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., 16.11.2016. Therefore, the due date of handing over of possession come out to be 16.11.2016. In the present case, the complainant was offered possession by the respondent on 31.05.2019 after obtaining occupation certificate dated 30.05.2019 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 annexed but not executed between the parties.
19. 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 30.05.2019. The respondent offered the possession of the unit in question to the complainant on 31.05.2019. 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

05.10.2020. 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.

20. 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., 16.11.2016 till the date of offer of possession i.e., 31.05.2019 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.

F.II Direct the respondent to return Rs.1,57,576/-, amount unreasonably charged by respondent by increasing sale price after execution of buyer's agreement between respondent and complainant.

21. The complainant in the said relief has sought refund of the amount of Rs.1,57,576/- for the unreasonable charged by the respondent by increasing sale price after execution of buyer's agreement. On the perusal of the complaint the Authority finds that the complainant has failed to place on record any document to substantiate the aforesaid relief claimed by him. In absence of any document, the aforesaid relief cannot be granted in favour of the complainant. Further, the respondent shall not charge anything from complainant which is not part of buyer's agreement.

F.III Direct the respondent to return entire amount paid as GST Tax by complainant between 01.07.2017 to 24.07.2019.

22. That the counsel for the complainant submitted that GST came into force on 01.07.2017 and the possession was supposed to be delivered by 16.11.2016.

Therefore, the tax which came into existence after the due date of possession and this extra cost should not be levied on the complainant. The authority has decided this issue in the complaint bearing no.7228 o12027 titled as Vineet Umesh Gupta Vs. M/s BPTP Limited & M/s Countrywide Promoters Pvt. Ltd wherein the authority has held that for the projects where the due date of possession was prior to 01.07.2017 (date of coming into force of GST), the respondent/promoter shall bear the difference in amount of VAT charges and GST the liability of GST had not become due up to the due date of possession as per the buyer's agreements.

F.IV Direct the complainant's bank to remove the lien marked over fixed deposit of Rs.2,52,929/- in favour of respondent on the pretext of future payment of HVAT for the period of (01.04.2014 to 30.06.2017) and also order to direct respondent to assist the process of removing lien from complainant's bank by providing NOG for the same.

23. The authority has decided this in the complaint bearing no. 4031 of 2019 titled as Varun Gupta y/s Emaar MGF Land Ltd. wherein the authority has held that the promoter is entitled to charge VAT from the allottee for the period upto 31.03.2014 @1.05% [one percent VAT + 5 percent surcharge on VAT. However, the promoter cannot charge any VAT from the allottees/prospective buyer's the period 01.04.2014 to 30.06.2017 as the same was to be borne by the promoter-developer only. The respondent-promoter is bound to adjust the said amount charged from the allottee with the dues payable by him or refund the amount if no dues are payable by him.

24. In the present complaint, the respondent has nor charged any amount towards HVAT for the period of 01.04.2014 to 30.06.2017, however, vide letter of offer of possession dated 31.05.2019 has demanded lien marked FD of Rs.2,52,929/- towards future liability of HVAT for liability post liability 01.04.2014 till 30.06.2017. In Light of judgment stated above, the respondent shall not demand the same and will initiated necessary action for the removal of lien.

F.V Direct the respondent to pay of Rs.55,000/- to the complainant as cost of the present litigation.

25. The complainant 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.


G. Directions of the authority

26. 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 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., 16.11.2016 till the date of offer of possession i.e., 31.05.2019 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 arrears of interest accrued so far shall be paid to the complainant within 90 days from the date 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 execute conveyance deed in terms of section 17 of the Act, 2016.
- iv. The respondent shall not charge anything from complainant which is not part of buyer's agreement.
27. Complaint stands disposed of.
28. 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