

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

Date of decision: 11.09.2024

NAME OF THE BUILDER		M/S Apex Buildwell Pvt. Ltd.	
PROJECT NAME		"Our Homes"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/4705/2023	Mr. Brij Bhushan Sharma & Mr. Kapil Sharma V/S M/s Apex Buildwell Pvt. Ltd.	Shri. Gaurav Rawat Advocate and Shri. Harshit Batra Advocate
2.	CR/4730/2023	Mr. Avinash Gupta & Mrs. Kalpna Gupta V/S M/s Apex Buildwell Pvt. Ltd	Shri. Gaurav Rawat Advocate and Shri Harshit Batra Advocate
3.	CR/4796/2023	Mr. Joginder Singh Yadav V/S M/s Apex Buildwell Pvt. Ltd	Shri. Gaurav Rawat Advocate and Shri Harshit Batra Advocate
4.	CR/4797/2023	Mrs. Bimla Rani V/S M/s Apex Buildwell Pvt. Ltd	Shri. Gaurav Rawat Advocate and Shri Harshit Batra Advocate

**CORAM:**

Shri Ashok Sangwan

**Member****ORDER**

1. This order shall dispose of all the complaints titled as above filed before the 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 allottee 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, "**Our Homes**" being developed by the same respondent/promoter i.e., M/s Apex Buildwell Pvt. Ltd. The terms and conditions of the Buyer's Agreement against the allotment of units in the project of the respondent/builder and fulcrum of the issues involved in all the cases pertains to failure on the part of the promoter to deliver timely possession of the units in question and certain other issues.
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:

<b>Project Name and Location</b>	<b>Apex buildwell Pvt Ltd. at "Our Homes", Sectors 37-C, Gurugram.</b>
<b>Occupation Certificate: - 29.11.2019</b>	
<b>Possession Clause: -</b>	
<b>Clause 5(iii)(b) of the Affordable Housing Policy, 2013</b>	
<i>"All flats in a specific project shall be allotted in one go within four months of sanction of building plans or receipt of environmental clearance whichever is later and possession of flats shall be offered within the validity period of 4 years of such sanction/clearance "</i>	



Sr. No	Complaint No., Case Title, and Date of filing of complaint	Reply status	Unit No.	Due date of possession	Basic sale Consideration/Total Amount paid by the complainants in Rs.	Conveyance deed
1.	CR/4705 / 2023  Mr. Brij Bhushan Sharma and Mr. Kapil Sharma V/S M/s Apex Buildwell Pvt. Ltd.  Date of Filing of complaint 25.10.2023	Reply received on 21.02.2024	725, Floor-7 <sup>th</sup> , Tower-Rose  Area admeasuring 516.67 sq. ft.	26.06.2017  (Note: - calculated 4 years from the date of Environmental clearance i.e 26.06.2013 )	TSC: - 16,00,000/-  AP: - 16,00,000/-	24.10.2023
2.	CR/4730/ 2023  Mr. Avinash Gupta V/S M/s Apex Buildwell Pvt. Ltd.  Date of Filing of complaint 25.10.2023	Reply received on 21.02.2024	432, Floor-4 <sup>th</sup> , Tower-Rose  Area admeasuring 516.67sq. ft.	26.06.2017  (Note: - calculated 4 years from the date of Environmental clearance i.e 26.06.2013 )	TSC: - 16,00,00/-  AP: - 16,00,000/-	14.01.2023



3.	CR/4796/2023 Mr. Joginder singh Yadav V/S M/s Apex Buildwell Pvt. Ltd.  Date of Filing of complaint 25.10.2023	Reply received on 21.02.2024	407, Floor-4 <sup>th</sup> Tower-Jasmine  Area admeasuring 516.67sq. ft.	26.06.2017  (Note: - calculated 4 years from the date of Environmental clearance i.e 26.06.2013 )	TSC: - 16,00,00/-  AP: - 17,81,526/-	25.02.2021
4.	CR/4794/2023 Mrs. Bimla Rani V/S M/s Apex Buildwell Pvt. Ltd.  Date of Filing of complaint 25.10.2023	Reply received on 21.02.2024	408, Floor-4 <sup>th</sup> Tower-Jasmine  Area admeasuring 516.67 sq. ft.	26.06.2017  (Note: - calculated 4 years from the date of Environmental clearance i.e 26.06.2013 )	TSC: - 16,00,000/-  AP: - 16,00,000/-	04.03.2021

**The complainants in the above complaints have sought the following reliefs:**

1. Direct the respondent to pay delayed possession charges along with the prescribed rate of interest.
2. Direct the respondent refund the amount collected under different heads along with the offer of possession which the complainant was not liable to
3. Direct the respondent to return the amount unreasonably charged by increasing sale price after execution of the Buyer's Agreement.
4. Set aside the one sided indemnity bond which the respondent got signed from the complainants under undue influence.

4. It has been decided to treat the said 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.

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5. The facts of all the above mentioned complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/4797/2023 titled as Bimla Rani V/S M/s Apex Buildwell Pvt. Ltd** are being taken into consideration for determining the rights of the allottee(s) qua delayed possession charges after the execution of the conveyance deed.

**A. Unit and project related details**

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

S.No.	Heads	Information
1.	Name of project	"Our Homes", Sector-37, Gurugram, Haryana.
2.	Project area	10.144 acres.
3.	Nature of the project	Low cost/Affordable Group Housing
4.	Rera registered	Registered 40 of 2019 dated- 08.07.2019
5.	Allotment letter	23.10.2012 (As on page no. 26 of complaint)
6.	Unit no.	408, Floor-4 <sup>th</sup> , Block/Tower-Jasmine (As on page no. 35 of complaint)

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7.	Unit measuring	516.67 sq. ft. (As on page no. 35of complaint)
8.	Date of execution of buyer's agreement	01.03.2013 (As on page no. 32 of complaint)
9.	Possession clause	<p><b>POSSESSION</b></p> <p><b>(a) Offer of possession</b>  <i>Within a period of thirty (36) months, with a grace period of 6 month, from the date of commencement of construction of the Complex upon the receipt of all project related approvals including sanction of building plans/revised plan and approval of all concerned authorities including the Fire Service Department, Civil Aviation Department, Traffic Department, pollution Control Department etc., as may be required .....</i></p> <p>[Emphasis supplied]</p>
10.	Date of grant of Environmental Clearance	26.06.2013
11.	Due date of possession	26.06.2017 [Calculated 4 years from date of environmental clearance]
12.	Basic sale consideration	Rs.16,00,000/-

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13.	Total amount paid by the complainant	Rs.16,00,000/-
14.	Occupation certificate	29.11.2019 (As on page no. 19 of complaint)
15.	Offer of possession	30.11.2019 (As on page no. 38 of reply)
16.	Unit handover letter	13.07.2023 (As per annexure 2 of written arguments submitted by the respondent)
17.	Conveyance deed	04.03.2021 (As on page no. 63 of complaint)

**B. Facts of the complaint:**

7. The complainant has made the following submissions in the complaint:
  - I. That the respondent launched an affordable group housing project called "Our Homes" at Sector - 37C, Gurugram, under the license no. 13 of 2012 dated 22.02.2012 issued by the DTCP, Haryana, Chandigarh.
  - II. That the complainant is a law abiding citizen. The respondent advertised about the project and painted a rosy picture of the project in its advertisements making tall claims.
  - III. In 2012, the respondent issued an advertisement and thereby invited applications from prospective buyers for the purchase of



unit in the said project. The respondent confirmed that the building plan approvals have been obtained from the concerned authority.

- IV. The complainant while searching for a flat/accommodation was lured by such advertisements and calls from the brokers of the respondent. Relying on the representations and assurances given by the respondent and on belief of such assurances, the complainant booked a unit in the project towards the booking of the unit bearing no. 408 on 4th Floor in Tower-Jasmine having an area admeasuring 516.67 sq.ft. for a total sale consideration of Rs.16,00,000/-.
- V. That a Buyer's Agreement was executed between the complainant and the respondent on 01.03.2013. As per annexure of the buyer's agreement the sale price of the said apartment was Rs.16,00,000/- inclusive of basic sale price, EDC, IDC, preferential location charges.
- VI. As per Clause-3(a) of the Apartment Buyer's Agreement, the respondent agreed to deliver the possession of the unit within period 36 months plus 6 months from the date of commencement of construction upon receipt of all project related approval. Due date of possession is calculated from the date of agreement i.e.. Hence, the due date of possession comes out to be 01.03.2016.
- VII. As per the demands raised by the respondent , the complainant has paid a total sum of Rs.16,00,00, towards the said unit against total sale consideration of Rs.16,00,000 /-. That the payment plan was designed in such a way to extract maximum payment from the buyers viz a viz or done/completed.





- VIII. That the complainant approached the respondent and asked about the status of construction and also raised objections towards non-completion of the project. In terms of Clause 3(a) of the Buyer's Agreement, the respondent was under an obligation to complete the construction and to offer the possession on or before 01.03.2016. That the complainant approached the respondent in person to know the fate of the construction and offer possession in terms of the Buyer's Agreement, respondent misrepresented to the complainant that the construction would be completed soon.
- IX. That the respondent after many follow ups and reminders, issued the physical handover of the unit.
- X. That the respondent is guilty of deficiency in services within the purview of provisions of the Act, 2016 and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017.

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

4. The complainant has sought following relief(s):
- i. Direct the respondent to pay delayed possession charges alongwith interest.
  - ii. Direct the respondent refund the amount collected under different heads along with the offer of possession which the complainant was not liable to
  - iii. Direct the respondent to return the amount unreasonably charged by increasing sale price after execution of the Buyer's Agreement.
  - iv. Set aside the one sided indemnity bond which the respondent got signed from the complainants under undue influence.

**D. Reply by respondent:**

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

- I. That the complainant approached the respondent and expressed her interest in booking an apartment in the Low Cost/Affordable Group Housing Project developed by respondent known as "Our Homes" situated in Sector 37C, Gurgaon, Haryana. Prior to the booking, the complainants have conducted extensive and independent enquiries with regard to the project and only after being fully satisfied on all aspects, they took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question.
- II. Thereafter, the complainant applied to the respondent for provisional allotment of the unit. Pursuant thereto, unit bearing no 408, located on the 4th Floor, Tower- Jasmine admeasuring 516.67 sq. ft. (tentative area) was allotted to the complainants. The respondent had no reason to suspect the *bonafide* of the complainants and proceeded to allot the unit.
- III. Thereafter, a Buyer's Agreement dated 01.03.2013 was executed between the complainant and the respondent. It is pertinent to mention that the Buyer's Agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on both the parties.
- IV. That as per Clause 5(iii)(b) of the Affordable Housing Policy, 2013, the due date of possession of the unit in in question is 4 years from the date of sanction of Building Plan or receipt of environmental clearance, whichever is later. The benefit of grace

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period may also be given to the respondent as per the terms and conditions of the Agreement dated 01.03.2013. At this stage, it is submitted that the benefit of grace has to be given as has also been considered by the Hon'ble Appellate Tribunal, Chandigarh in the case titled as Emaar MGF Land Ltd. vs Laddi Praramjit Singh Appeal no. 122 of 2022 that if the grace period is mentioned in the clause, the benefit of the same is allowed.

- V. That the due date/possession clause provided under clause 3 of the Builder Buyer Agreement was subjective in nature and hence shall depend on the Allottee/Complainant complying all the terms and conditions of the Agreement. Thus, the due date of offer of possession was subjected to the terms of Clause 3 (Force Majeure) and the complainant having complied with all the terms and conditions of the Builder Buyer Agreement. However, the complainant failed to fulfilled his obligation and had defaulted in making the outstanding payments.

Moreover, it is to be noted that the development and implementation of the project have been hindered on account of several orders passed by various authorities/forums/courts, before passing of the due date of offer of possession.

- VI. That a period of 377 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of orders of various statutory authorities and the Covid-19 pandemic. It is well recognized that one day of hindrance in the construction industry leads to a gigantic delay and has a deep effect on the overall construction process of a real estate project. All the circumstances stated hereinabove come



within the meaning of *force majeure*, as stated above. However, despite all odds, the respondent was able to carry out construction/development at the project site and obtain the necessary approvals and sanctions and has ensured compliance under the Agreement, laws, and, rules and regulations.

- VII. That despite such delay, earnestly fulfilled its obligation under the Buyer's Agreement and completed the project as expeditiously as possible. The various circumstances beyond the control of the respondent are the factors responsible for the delayed development of the project. The respondent cannot be penalized and held responsible for the default of its customers or due to force majeure circumstances. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.
- VIII. That the respondent has complied with all of its obligations, not only with respect to the Buyer's Agreement with the complainant but also as per the concerned laws, rules, and regulations thereunder and the local authorities. That despite innumerable hardships being faced by the respondent, the respondent completed the construction of the project and applied for the occupation certificate before the concerned Authority and successfully attained the Occupation Certificate dated 29.11.2019.
- IX. It is submitted that once an application for grant of occupation certificate is submitted to the concerned statutory authority, the respondent ceases to have any control over the same. The grant of occupation certificate is the prerogative of the concerned statutory authority and the respondent does not exercise any

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influence in any manner whatsoever over the same. Therefore, it is respectfully submitted that the time period utilised by the concerned statutory authority for granting the occupation certificate is liable to be excluded from the time period utilised for the implementation of the project.

- X. That after receiving of the Occupation Certificate, the possession of the unit was lawfully offered to the complainant vide Offer of Possession dated 30.11.2019. That the physical possession was taken by the complainant without any demur and hence a possession certificate was thereby issued in favour of the complainant by the respondent. It is now, after over 3 years of the offer of possession that the complainant has approached the Authority as an afterthought seeking delay possession charges with the sole intent of getting wrongful gains and causing wrongful loss to the respondent. Without prejudice to the contents of the respondent, it is submitted that the present complaint is barred by limitation as the cause of action if any, only arose till the receipt of occupancy certificate and not thereafter.
- XI. That after giving the lawful possession of the unit to the complainant, the Conveyance Deed dated 04.03.2021 was also executed between the complainant and the respondent. It is submitted that after execution of the Conveyance Deed, the contractual relationship between the parties stands fully satisfied and comes to an end. That there remains no claim/ grievance of the complainant with respect to the Agreement or any obligation of the parties thereunder.



- XII. That after the execution of the Conveyance Deed, the parties are estopped from making any claims at this instance. In light of the *bona fide* conduct of the respondent, the peaceful possession having been taken by the complainant, non-existence of cause of action and the frivolous complaint filed by the complainant, this complaint is bound to be dismissed with costs in favor of the respondent.
6. 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:**

7. 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**

8. 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**

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9. 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;*

10. 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 objections raised by the respondent**

**F.1 Objection regarding delay due to force majeure circumstances**

11. The respondent-promoter has raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the National Green Tribunal, Environment Pollution (Prevention & Control) Authority, shortage of labour and stoppage of work due to lock down due to outbreak of Covid-19 pandemic. Since there were circumstances beyond the control of respondent, so taking into consideration the above-mentioned facts, the respondent be allowed the period during which his construction activities came to stand still, and the said



period be excluded while calculating the due date. The plea of the respondent regarding various orders of the authorities, all the pleas advanced in this regard are devoid of merit. The orders passed by authorities banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. In the present case, according to Clause 5(iii)(b) of the Affordable Housing Policy, 2013, the stipulated timeline for handing over possession of the unit in question is four years from either the date of sanction of building plans or the receipt of environmental clearance, whichever occurs later. In this instance, the environmental clearance was granted on 26.06.2013. Calculating four years from this date results in 26.06.2017. The argument related to Covid-19 lacks merit since the pandemic began in March 2020, which is well after the due possession date. Therefore, leniency cannot be extended to the promoter/respondent based on these grounds. It is a fundamental principle that one cannot benefit from their own wrongdoing. Consequently, the Authority concludes that no relief can be granted to the respondent in this regard.

**F.II. Objection regarding the complainant cannot claim delay possession charges after execution of the conveyance deed.**

12. It had been contended by the respondent that on execution of the 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 stopped from claiming any interest in the facts and circumstances of the case.

14. It is important to look at the definition of the term "deed" itself in order to understand the extent of the relationship between the allottee and the promoter. A deed is a written document or an instrument that is sealed, signed, delivered by all the parties to the contract i.e., 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 sale 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.
15. 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 allottees on execution of the conveyance deed.

16. The allottee has invested her hard-earned money and there is no doubt that the promoter has been enjoying benefits of and the next step is to get their title perfected by executing the conveyance deed which is the statutory right of the allottees. Also, the obligation of the developer-promoter does not end with the execution of a conveyance deed. Therefore, in furtherance to the Hon'ble Apex Court judgement and the law laid down in case titled as ***Wg.Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd. (now known as BEGUR OMR Homes Pvt. Ltd.) and Ors. (Civil appeal no. 6239 of 2019) dated 24.08.2020***, the relevant paras are reproduced herein below:

*"34 The developer has not disputed these communications Though these are four communications issued by the developer, the appellants submitted that they are not isolated aberrations but fit into the pattern. The developer does not state that it was willing to offer the flat purchasers possession of their flats and the right to execute conveyance of the flats while reserving their claim for compensation for delay. On the contrary, the tenor of the communications indicates that while executing the Deeds of Conveyance, the flat buyers were informed that no form of protest or reservation would be acceptable. The flat buyers were essentially presented with an unfair choice of either retaining their rights to pursue their claims (in which event they would not get possession or title in the meantime) or to forsake the claims in order to perfect their titles to the flats for which they have paid valuable consideration. In this backdrop, the simple question which we need to address is whether a flat buyer who espouses a claim against the developer for delayed possession can as a consequence of doing so be compelled to defer the right to obtain a conveyance to perfect their title. It would, in our view, be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, the purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance to forsake the right to claim compensation. This basically is a position in which the NCDRC has espoused. We cannot countenance that view.*

*35. The flat purchasers invested their hard earned money. It is only reasonable to presume that the next logical step is for the purchaser to perfect the title to the premises which have been allotted under the terms pf the ABA. But the submission of the developer is that the purchaser forsakes the remedy before the consumer forum*



*by seeing a Deed of conveyance. To accept such a construction would lead to an absurd consequence of requiring the purchaser either to abandon a just claim as a condition for obtaining the conveyance or to indefinitely delay the execution of the Deed of Conveyance pending protracted consumer litigation."*

17. The Authority has already taken a view in **Cr. No. 4031/2019** and others titled as ***Varun Gupta V/s Emaar MGF Land limited and others*** and observed that the execution of a conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the subject unit and upon taking possession, and/or executing conveyance deed, the complainant never gave up his statutory right to seek delayed possession charges as per the provisions of the said Act.
18. After consideration of all the facts and circumstances, the Authority holds that even after execution of the conveyance deed, the complainant/allottee cannot be precluded from the right to seek delay possession charges from the respondent-promoter.

### **F.III. Objection regarding complaint being barred by limitation**

19. 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 Authority 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 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 of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.



20. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in **MA NO.21 of 2022 of Sua 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 may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
21. In the present matter the cause of action arose on 30.11.2019 when the possession was handed over to the complainant by the respondent. The complainant has filed the present complaint on 25.10.2023 which is 3 years 11 months from the date of cause of action. In the present case 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. In view of the above, the Authority is of the view that the present complaint has been filed within a reasonable time period and is not barred by the limitation.

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

**G.1 Direct the respondent to pay delayed possession charges alongwith interest.**

22. The complainant booked a unit in the project "Our Home" located in Sector-37C, Gurugram, being developed by the respondent. They were allotted unit number 408 on the 4th floor of Tower-Jasmine, with a super area of 516.67 sq.ft. The Buyer's Agreement was executed between the parties on 01.03.2013. According to Clause 5(iii)(b) of the Affordable Housing Policy 2013, possession of the unit was to be provided to the complainants within four years from either the date of obtaining building plan approvals or the grant of

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environmental clearance from the concerned authorities, whichever was later. The respondent obtained the environmental clearance on 26.06.2013. Calculating four years from this date, the due date for possession comes out to be 26.06.2017. The respondent obtained the occupation certificate on 29.11.2019, and the offer of possession was made on 30.11.2019. The conveyance deed was executed on 04.03.2021.

23. In the present complaint, the complainant intends to continue with the project and are seeking delay possession charges along with interest on the amount paid. 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.

***"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. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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**"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]**

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."

25. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
26. 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., 11.09.2024 is 9.10 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
27. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

*(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*

*(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*



28. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the Authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. As per Clause 5 (iii)(b) of the Affordable Housing Policy 2013, the due date of possession of the unit in question is 4 years from the date of sanction of building plans or receipt of environmental clearance, whichever is later. The environmental clearance of the project was obtained by the respondent on 26.06.2013. Therefore, the due date of handing over possession is 26.06.2017.
29. The competent authorities granted the occupation certificate to the respondent on 29.11.2019, and the offer of possession was made by the respondent on 30.11.2019. The deadline for handing over possession of the unit was 26.06.2017, and the delay on the part of the respondent is evident.
30. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the allottees, shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 26.06.2017 till offer of possession plus two months after obtaining occupation certificate from the competent authority or actual handing over of possession whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

**G.II. Direct the respondent refund the amount collected under different heads along with the offer of possession which the complainant was not liable to pay.**

✓



**G.III Direct the respondent to return the amount unreasonably charged by increasing sale price after execution of the Buyer's Agreement.**

31. 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.IV Set aside the one sided indemnity bond which the respondent got signed from the complainants under undue influence.**

33. The respondent is directed to not to place any condition or ask the complainants to sign an indemnity of any nature whatsoever, which is prejudicial to their rights as has been decided by the authority in complaint bearing no. **4031 of 2019** titled as **Varun Gupta V. Emaar MGF Land Ltd.**

**H. Directions of the authority**

34. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions entrusted to the authority under section 34(f):
- i. The respondent is directed to pay the interest at the prescribed rate i.e., 11.10% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 26.06.2017 till offer of possession plus two months after





obtaining occupation certificate from the competent authority or actual handover, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

35. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
36. Complaints stand disposed of.
37. True certified copy of this order shall be placed in the case file of each matter.
38. File be consigned to registry.

**Ashok Sangwan**  
**(Member)**

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 11.09.2024

**HARERA**