

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

Complaint no. : 3369 of 2023
Complaint filed on : 24.07.2023
Date of decision : 20.09.2024

Sharadh Manian

R/o- F-304, EMERALD ESTATE, SECTOR-65,
GURUGRAM

Complainant

Versus

M/s Emaar MGF Land Ltd.

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

Respondent

CORAM

Shri Ashok Sangwan

Member

APPEARANCE:

Shri Varun Chug, (Advocate)
Shri Harshit Batra, (Advocate)

**Complainant
Respondent**

ORDER

1. The present complaint dated 24.07.2023 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S.no.	Particulars	Details
1.	Name of the project	"Emerald Estate" in Sector 65, Gurgaon.
2.	Nature of the project	Group Housing Colony
3.	Project area	25.499 acres
4.	RERA Registered/ not registered	Registered 104 of 2017 dated 24.08.2017 valid up to 23.08.2022
5.	DTCP License No.	06 of 2008 dated 17.01.2008
6.	Unit no.	EEA-F-F03-04, 3 rd floor, F block (Page no. 21 of complaint)
7.	Unit admeasuring	1395 sq. ft. (Page no. 21 of complaint)
8.	Date of apartment buyer agreement b/w original allottee and respondent	20.02.2010 (Page no. 16 of complaint)
9.	Date of endorsement	19.03.2019 (page no. 53 of complaint)
10.	Possession clause	<p>11.Possession</p> <p>(a) Time for handing over the Possession</p> <p><i>Subject to the terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to handover the possession of the unit within 36 months from the date of commencement of construction and development of the Unit. The allottee(s) agrees and understands that the Company shall be entitled to a grace period of six months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project.</i></p> <p>[as per buyer's agreement at page 34 of complaint]</p>

11.	Date of commencement of construction	31.07.2010 (As per project details)
12.	Due date of delivery of possession	31.01.2014 [calculated from the date of commencement of construction i.e., 31.07.2010 and further grace period of 6 months]
13.	Basic sale consideration	Rs. 53,68,664/- (As per payment plan at page 52 of the complaint)
14.	Total sale consideration	Rs. 57,94,710/- (as per SOA dated 13.07.2023 on page no. 61 of complaint)
15.	Total amount paid by the complainant	Rs.57,94,716/- (as per SOA dated 13.07.2023 on page no. 61 of complaint)
16.	Occupation certificate	11.11.2020 (page no. 153 of reply)
17.	Offer of possession	20.11.2020 (page no. 55 of complaint)
18.	Unit handover letter	25.01.2021 (Page no. 60 of complaint)
19.	Conveyance deed	05.01.2022 (page no. 69 of complaint)

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

- i. That, initially, the property in question i.e. apartment bearing No. EEA-F-F-03-04 admeasuring 1395 Sq. ft., in the project of the respondent i.e. Emaar India Limited, known as "Emerald Estate Apartments" (the "Project") situated at Sector-65, Gurugram, Haryana, was booked by Mr. Jai Prakash Nathaniel. Subsequently original allottee and respondent entered into builder buyer agreement on 20.02.2010.
- ii. That, thereafter original allottee i.e., Mr. Jai Prakash Nathaniel entered into an agreement to sell with the complainant w.r.t the unit in question and the property was later assigned in his favour, by virtue of the endorsement letter dated 19.03.2019.

- iii. That, in the said buyer's agreement dated 20.02.2010, respondent had categorically stated that the possession of the said apartment would be handed over within 36 months from the date of commencement of the construction and development of the unit i.e. 26.08.2010 (sic. 31.07.2010), with a further grace period of another 6 months. Moreover, at the time of transferring the apartment in question, the complainant was further coerced by the respondent to sign affidavits/indemnity cum undertaking, in favour of the respondent wherein the complainant was required to undertake, not to claim or raise any compensation for delay in handing over possession of the property.
- iv. That, the said buyer's agreement and the indemnity cum undertaking are totally one sided, which impose completely biased terms and conditions upon the complainant, thereby tilting the balance of power in favour of the respondent, which is further manifest from the fact that the delay in handing over the possession by the respondent would attract only a meagre penalty of Rs.5/- per sq. ft., on the super area of the flat, on monthly basis, whereas the penalty for failure to take possession would attract holding charges of Rs.50/- per sq. ft. and 24% penal interest per annum compounded quarterly on the unpaid amount of instalment due to the respondent.
- v. That, the property was sold by representing that the same will be luxurious apartments however all such representations seem to have been made in order to lure complainant to purchase the apartment at extremely high prices. There are various deviations from the initial representations.
- vi. That, the complainant, without any default, had been timely paying the instalments towards the property, as and when demanded by the respondent towards the aforesaid residential apartment in the project and after making the balance payment which was to be made at the time of

offering of possession, got the property transferred in his name on 05.01.2022.

- vii. That, that the respondent has duped and misled the complainant by charging a hefty sum of Rs.3,38,287/- Lacs towards preferential location charges on account of the unit being park and pool facing facing which is clearly spelled out in the builder buyer's agreement. However, strangely, the unit in question is neither park facing nor pool facing.
- viii. That, the respondent has breached the fundamental term of the contract by inordinately delaying in delivery of the possession and not providing adequate compensation in line with the provisions of the RERA Act. In fact, the respondent has even failed to provide the compensation as per the terms of the builder buyer's agreement and has flatly refused to indemnify the complainant, who sought compensation for the entire period of delay in handing over the possession of the unit.
- ix. That, the respondent has not acknowledged the requests of the complainant in regard to the delayed compensation. In fact, the promised amenities are missing. The complainant was made to make advance deposit on the basis of information contained in the brochure, which is false on the face of it.
- x. Moreover, the respondent's lackadaisical approach in development of the project as also non-compliance with applicable rules and regulations is evinced from the fact that the licence of the said project has not been renewed. The same is further substantiated by the fact that the respondent has not got the proposed project registered under the RERA.
- xi. That, the respondent had committed gross violation of the provisions of section 18 (1) of the Act by not handing over the timely possession of the apartment in question and not giving the interest and compensation to the buyers.

xii. That, the respondent has committed various acts of omission and commission by making incorrect and false statement in the advertisement material as well as by committing other serious acts as mentioned in preceding paragraph. The project has been inordinately delayed. The respondent has resorted to misrepresentation. The complainant, therefore, seek direction to the respondent to refund preferential location charges wrongly charged from the complainant besides payment of interest @ 18% p.a. as payment, towards delay in handing over the property in question.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - i. Direct the respondent to pay interest @ 18% p.a. as payment, towards delay in handing over the property in question as per provisions of The Real Estate (Regulation and Development) Act, 2016 ("RERA") and Haryana Real Estate (Regulation and Development) Rules, 2017 ("HRERA");
 - ii. Direct the respondent/ promoter to return PLC charges of Rs.3,38,287/-, as per provisions of RERA and HRERA
 - iii. Direct the respondent to pay a sum of Rs.50,000/- to the complainant towards the cost of the 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 complainants have not come before this Authority with clean hands and has suppressed vital and material facts from this Authority. That the Authority has no jurisdiction to deal with the present matter and the present complaint is not maintainable.

- ii. That the original allottee i.e., Jai Prakash Nathaniel, being interested in the real estate development of the respondent, a group housing colony known as "Emerald Estate Apartments" tentatively applied for provisional allotment via application form dated 08.08.2009 and were consequently allotted unit no.EEA-F-F03-04 having a super area of 1395 sq. ft. vide provisional allotment letter dated 31.12.2009. That thereafter, the buyer's agreement was executed on 20.02.2010.
- iii. That thereafter the original allottee transferred the unit to the subsequent buyer/complainant namely, Mr.Sharadh Manian, the complainant herein. That having done so, the original allottee and the complainants requested for the transfer and executed affidavits and undertakings in this regard on 15.03.2019. That thereafter, the complainants' nomination was confirmed on 19.03.2019.
- iv. That as per clause 11 of the buyer's agreement dated 20.02.2010 the time period for delivery of possession was 36 months along with grace period of 6 months from the date of execution of the buyer's agreement subject to the allottee(s) having strictly complied with all terms and conditions of the buyer's agreement and not being in default of any provision of the buyer's agreement including remittance of all amounts due and payable by the allottee(s) under the agreement as per the schedule of payment incorporated in the buyer's agreement. The complainants have completely misconstrued, misinterpreted and miscalculated the time period as determined in the buyer's agreement. It is pertinent to mention that it was categorically provided in clause 11(b)(iv) that in case of any default/delay by the allottees

in payment as per schedule of payment incorporated in the buyer's agreement, the date of handing over of possession shall be extended accordingly, solely on the respondent's discretion till the payment of all outstanding amounts to the satisfaction of the respondent.

- v. That the relationship between the parties is contractual in nature and is determined by the terms and conditions of the buyer's agreement executed with the Original allottee, endorsed in favour of the complainant. That the endorsement/nomination of the complainants was done after the parties had categorically, voluntarily, and willingly agreed to the terms and conditions of the buyer's agreement, status of the project and the unit.
- vi. That despite all the unforeseen and unavoidable circumstances, the respondent did not default and instead completed the construction of the project without receiving regular payment of monies by the allottees like the complainant and the erstwhile buyers. That in case of delays caused in making payments against the unit, the proposed due date of delivery of possession is liable to be extended. That as is known and practically understood that regular and timely payments by the allottees are pertinent towards the completion of a real estate project, yet, without the same, the respondent has shown an exemplary conduct as a real estate promoter which should be duly taken into account. Upon defaults occurring in making timely payments following payment request letters, a reminder was served. A record of the request letters and reminder is noted below:

S. No.	Particulars	Dated
1.	Payment Request Letter	03.11.2009

2.	Reminder 1	15.02.2010
3.	Payment Request Letter	02.11.2010
4.	Payment Request Letter	09.11.2013
5.	Payment Request Letter	07.01.2014
6.	Payment Request Letter	08.05.2014
7.	Payment Request Letter	04.07.2014
8.	Payment Request Letter	03.09.2014
9.	Payment Request Letter	23.01.2015
10.	Payment Request Letter	28.09.2016
11.	HVAT Payment Request Letter	30.03.2017
12.	Payment Request Letter	09.01.2018
13.	Payment Request Letter	19.08.2020
13.	Payment Request Reminder 1	14.12.2020

- vii. That furthermore, the delivery of possession is further subject to *force majeure* conditions as spelled out in clause 27 of the buyer's agreement. The respondent was adversely affected by various construction bans, lack of availability of building material, regulation of the construction and development activities by the judicial authorities including NGT in NCR on account of the environmental conditions, restrictions on usage of ground water by the High Court of Punjab & Haryana, demonetization etc. and other force majeure circumstances, yet, the respondent completed the construction of the Project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the complainants and demanding the prices only as and when the construction was being done.
- viii. That without admitting or acknowledging in any manner the truth or legality of the allegations levelled by the complainants and without prejudice to the contentions of the respondent, it is submitted that the project has got delayed

on account of the following reasons which were/are beyond the power and control of the respondent:

I. Second staircase issue:

- a) The building plans for the apartment/tower in question was approved by the competent authority under the then applicable National Building Code in terms of which buildings having height of 15mtrs. or above but having area of less than 500 sq. metres. on each floor, were being approved by the competent authorities with a single staircase and construction was being carried out accordingly.
- b) Subsequently, the National Building Code (NBC) was revised in the year 2016 and in terms of the same, all high-rise buildings (i.e., buildings having height of 15 metres. and above), irrespective of the area of each floor, are now required to have two staircases.
- c) Furthermore, it was notified vide Gazette published on 15.03.2017 that the provisions of NBC 2016 supersede those of NBC 2005. Notification dated 15.03.2017.
- d) The fire department is seeking to retrospectively apply the said provision and while processing the Fire NOC application has been insisting on two stair cases in all high rise buildings even in cases where the building plans stood approved with a provision for a single staircase and which have been constructed accordingly. The fire department has issued a provisional Fire NOC with the requirement that the second staircase would be constructed by the developer within one year from the date of issuance of the provisional Fire NOC.
- e) In view of the practical difficulties in constructing a second staircase in a building that already stands constructed according to duly approved plans, the respondent made several representations to various Government Authorities requesting that the requirement of a second staircase in such cases be dispensed with. It was pointed out by the respondent that construction of a second stair case would not be possible for several technical reasons such as obstruction of Fire tender path, violation of the setback norms, violation of fire safety norms in as much as the second staircase would not be connected to the common lobby area and that construction of second staircase by connecting balconies of the dwelling units would pose a security and privacy

concern. The respondent had also pointed out that the allottees of the dwelling units were also eagerly awaiting possession of their units since long and requested that the Fire NOC be issued without any preconditions.

- f) The fire department inspected the site of the project and sought alternate proposals from the respondent to meet the requirement of second staircase in the buildings in question. The respondent accordingly submitted various proposals to the Fire Department.

II. Defaults of Contractor:

- a) That a contract dated 01.11.2010 was executed between the respondent and M/s B L Kashyap and sons (BLK/Contractor) in terms of which the contractor was to construct residential projects being developed by the respondent in the name and style of "Emerald Estate" and "Emerald Floors Premier", including civil, structure, finishing, MEP, external development, infrastructure, horticulture, EWS, clubhouses, swimming pools, convenience shopping etc. The start date of the project as determined by the parties was 26 July 2010 and the scheduled date of completion of the project was 25 July 2013.
- b) That the contractor was not able to meet the agreed timelines for construction of the project. The progress of work at the project site was extremely slow on account of various defaults on the part of the contractor, such as failure to deploy adequate manpower, shortage of materials etc. in this regard, the respondent made several requests to the contractor to expedite progress of the work at the project site. However, the contractor did not adhere to the said requests and the work at the site came to a standstill.
- c) That in the aforesaid circumstances, the respondent was constrained to issue Notice of Termination dated 16.01.2015, terminating the contract and calling upon the contractor to remove itself from the project site without removal/ damage to the materials, equipment's, tools, plant & machinery, and to hand over the contract documents.
- d) That the respondent apprehended that the contractor would remove from the project site, material, tools, plant & machinery which would then not be available to the respondent for use for completion of the project in terms of clause 95.1 (GCC) of the contract. Therefore, the respondent filed a petition bearing no. O.M.P. No. 100 of 2015 under

Section 9 of the Arbitration and Conciliation Act, 1996 before this Hon'ble High Court seeking urgent reliefs in the nature of restraining the contractor from interfering with the business activities of the petitioner at the project site, removing any material, equipment, tools, plant & machinery from the project site and appointing a local commissioner to inspect the project site and prepare an inventory of material, equipment, tools, plant & machinery.

- e) However, the parties settled the disputes during the pendency of the aforesaid proceedings and the contractor assured the respondent that the project shall be completed within the decided timeline. This was considered to be in the interest of the project as well as to mitigate losses, since considerable time would have been spent in re-tendering of the works. Further, the contractor had also undertaken to complete the project within the agreed timelines i.e. within eighteen (18) months.
- f) That in spite of the aforementioned settlement between the respondent and the contractor, and with the contractor's assurances that the project will be finished within the agreed timeline, the contractor did not amend its ways, and persistently defaulted in meeting the agreed timelines for completion of the project.
- g) That in view of the above, the respondent was constrained to terminate the contract with the contractor vide termination notice dated 30.8.2018. After termination of the contract, the respondent filed a petition against the contractor before the Hon'ble Delhi High Court seeking interim protection against the contractor so that the contractor does not, inter alia, disturb the possession and work at the site. Similar petition was also filed by the contractor against the respondent.
- h) That the aforesaid two petitions, along with two other petitions pertaining to a different contract came up for hearing on 6th of September 2018. The Hon'ble High Court by order dated 6th of September 2018 disposed of the said cases and issued several directions. The Hon'ble High Court appointed Justice A P Shah (Retd) as the Sole Arbitrator for adjudication of disputes between the respondent and the contractor. Furthermore, RITES Ltd (a Government Undertaking) was appointed as the Local Commissioner to inter alia, inspect and take joint measurement of work done and balance to be done and file its report before the Sole Arbitrator. The High Court gave liberty to the respondent to award the contract to new agency (ies) for

completing the remaining work. However, it was directed that the project site shall be handed over to such new agency with the permission of the Sole Arbitrator.

- i) That the arbitration proceedings titled as B L Kashyap and Sons Vs Emaar MGF Land Ltd (arbitration case number 1 of 2018) before Justice A P Shah (Retd), Sole Arbitrator have been initiated.

The hon'ble Arbitrator vide order dated 27.04.2019 gave liberty to the respondent to appoint another contractor w.e.f. 15.05.2019.

- ix. That all these circumstances come within the purview of the *force majeure* clause and hence allow a reasonable time to the respondent builder. That it must also be noted that the respondent had the right to suspend the construction of the project upon happening of circumstances beyond the control of the respondent as per Clause 11(b)(i), however, despite all the hardships faced by the respondent, the respondent did not suspend the construction and managed to keep the Project afloat through all the adversities.
- x. Without prejudice to the rights of the respondent, in the present matter, the due date of offer of possession needs to be calculated from the nomination of the complainant. Hence, the due date as per clause 11(a) of the buyer's agreement, i.e., 36 months and 6 months grace period, has to be taken from the date of nomination, i.e., 19.03.2019. Hence, the due date of possession 19.09.2022.
- xi. That when the complainant bought the unit, the construction and the possession was already delayed from the original tentative date, due to reasons beyond the power and control of the respondent, as noted above. The complainant bought the unit with open eyes and being fully aware of the stage and status of the completion of the construction of the unit. That such

prior knowledge, willing and self-initiated endorsement of the complainant, without any protest, amounts to acceptance of the existing circumstances and the complainant cannot be allowed to reap benefits by extracting monies from the respondent and forgoing their complete satisfaction against the unit. Hence, the complaint is liable to be dismissed with costs against the complainants.

- xii. That since the complainants were already in knowledge of the delay caused which was beyond the control of the respondent as the proposed due date for the erstwhile allottee had already expired at the time of the nomination of the complainant (19.03.2019), their present claim cannot be rightly made.
- xiii. That moreover, the respondent has complied with all of its obligations, not only with respect to the buyer's agreement but also as per the concerned laws, rules, and regulations thereunder and the local authorities. That despite the innumerable hardships being faced by the respondent, the respondent completed the construction of the project and applied for part occupation certificate vide an application dated 16.07.2020 before the concerned Authority and successfully attained the occupation certificate dated 11.11.2020. That once an application for grant of occupation certificate is submitted to the concerned statutory authority, thereafter 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 influence in any manner whatsoever over the same.
- xiv. There is a delay caused due to the non-issuance of the occupation certificate by the statutory authority while calculating the period of delay. 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 utilized for the implementation of the project.

- xv. That thereafter, and only after obtaining the requisite permissions, the respondent legally offered the possession of the unit to the complainant on 20.11.2020. The complainants thereafter executed the indemnity cum undertaking for possession on 18.12.2020 and subsequently, the physical possession of the unit was taken on 25.01.2021. It needs to be categorically noted that the complainant has taken the peaceful possession after having satisfied themselves with regard to the measurement, location, dimension and development etc of the unit and the complainant had no claim of any nature whatsoever against the company with regard to the size, dimension, area, location and legal status of the unit, as is evident in the unit handover letter dated 25.01.2021.
- xvi. That the respondent has granted a number of benefits to the complainant including credit for anti-profiteering of Rs.48,382, GST for Rs.787, and EPR of Rs.84, as reflected in the statement of accounts dated 27.07.2023.
- xvii. That thereafter, the absolute title over the unit was transferred to the complainant through conveyance deed dated 05.01.2022. That the complainant after having executed the conveyance deed and taking peaceful possession of the unit, and having enjoyed such possession for such a long period, should not be entitled to claim the interest on the delayed possession. Thus, the present complaint is devoid of any cause of action and is nothing but an abuse process of law. That a contract is deemed to be concluded after

execution of the conveyance deed and hence the present complaint is liable to be dismissed with heavy costs. That after having slept on their rights for a number of years, the complainants cannot be rightly allowed to have the present claims. 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.

- xviii. That in accordance with the facts and circumstances noted above, the present claim is barred by limitation. That after the receipt of the occupation certificate, there remains no delay in the project.
- xix. The contractual relationship between the parties has come to an end after the execution of the conveyance deed and handover of possession to the complete satisfaction of the complainant.
- xx. That at this stage, it is reiterated that there is no delay for the complainant who has subsequently bought the unit and executed the conveyance deed without any demur. That moreover, after the execution of the conveyance deed, the contractual relationship between the parties stands fully satisfied and comes to an end. That after the execution of the conveyance deed, the parties are estopped from making any claims at this instance. That there remains no claim/ grievance of the complainants with respect to the buyer's agreement or any obligation of the parties including but not limited to delay compensation.
- xxi. That the respondent has also credited early payment rebate of Rs.32,499/- and without accepting the contents of the complaint in any manner whatsoever, and without prejudice to the rights of the respondent, delayed interest if any has to be calculated only on the amounts deposited by the

allottees/complainants towards the basic principal amount of the unit in question and not on any amount credited by the respondent, or any payment made by the allottees/complainants towards delayed payment charges (DPC) or any taxes/statutory payments, etc.

xxii. That in light of the *bona fide* conduct of the respondent, no delay for the complainants, the peaceful possession having been taken by the complainants, non-existence of cause of action, claim being barred by limitation and the frivolous complaint filed by the complainants, this complaint is bound to be dismissed with costs in favor of the respondent.

7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

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

E.II Subject-matter jurisdiction

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

Section 11

.....

(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

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

F. Findings on the objections raised by the respondent:

F.1 Objection regarding the complaint being barred by estoppel.

12. The respondent has raised an objection that the instant complaint is barred by estoppel as upon execution of conveyance deed dated 05.01.2022, the complainants are now estopped from raising these belated claims/demands as they themselves had acknowledged and accepted that "that the vendee is fully satisfied in this regard and has no complaint or claim in respect of the area of the said apartment, any item of work, material, quality of work, installation, compensation for delay, if any, with respect to the said apartment, etc., therein."
13. The Authority observes that though the conveyance deed has been executed on 05.01.2022 but as per proviso to section 18 of the Act of 2016,

if the 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. In the present complaint, as per the possession clause of the buyer's agreement, the due date of possession of the unit was 31.01.2014 but the same was offered on 20.11.2020 after a delay of almost 6 years. Therefore, the complainants are entitled for delay possession charges for the delayed period as statutory right of the complainants-allottee as per the provisions of section 18 of the Act of 2016. Thus, in view of the agreed terms and conditions duly agreed between the parties and the provisions of the Act of 2016, the contention of the respondent stands rejected.

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

14. So far as the issue of limitation is concerned, the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is a universally accepted maxim, and the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority is of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.
15. 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.

16. In the present matter the cause of action arose on 20.11.2020 when the offer of possession was made by the respondent to the complainant. The complainant has filed the present complaint on 24.07.2023 which is 2 years 8 months and 4 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 02.11.2025. In view of the above, the Authority is of the view that the present complaint has been filed within a reasonable period of time and is not barred by the limitation.

F.III Whether the complainant can claim delayed possession charges after execution of conveyance deed?

17. The respondent stated that the complainants have alleged that the possession of the unit was to be given not later than 31.01.2014 and therefore cause of action, if any, accrued in favour of the complainants in 2014. The transaction between the parties stands concluded upon the execution of conveyance deed as the same was executed in favour of the complainant on 05.01.2022.
18. It has been contended by the respondent that on execution of conveyance deed, the relationship between both the parties stands concluded and no right or liabilities can be asserted by the respondent or the complainant against the other. Therefore, the complainants are estopped from claiming any interest in the facts and circumstances of the case.
19. It is important to look at the definition of the term 'deed' itself in order to understand the extent of the relationship between an allottee and promoter. A deed is a written document or an instrument that is sealed, signed and delivered by all the parties to the contract (buyer and seller). It is a contractual document that includes legally valid terms and is enforceable in a court of law. It is mandatory that a deed should be in

writing and both the parties involved must sign the document. Thus, a conveyance deed is essentially one wherein the seller transfers all rights to legally own, keep and enjoy a particular asset, immovable or movable. In this case, the assets under consideration are immovable property. On signing a conveyance deed, the original owner transfers all legal rights over the property in question to the buyer, against a valid consideration (usually monetary). Therefore, a 'conveyance deed' or 'sale deed' implies that the seller signs a document stating that all authority and ownership of the property in question has been transferred to the buyer.

20. From the above, it is clear that on execution of a sale/ conveyance deed, only the title and interest in the said immovable property (herein the allotted unit) is transferred. However, the conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the said unit whereby the right, title and interest has been transferred in the name of the allottee on execution of the conveyance deed.
21. The authority has already taken a view in in *Cr. no. 4031/2019 and others tiled as Varun Gupta V/s Emaar MGF Land Limited and others* and observed that the execution of a conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the subject unit and upon taking possession, and/or executing conveyance deed, the complainants never gave up his statutory right to seek delayed possession charges as per the provisions of the said Act.
22. After consideration of all the facts and circumstances, the authority holds that even after execution of the conveyance deed, the complainants- allottee cannot be precluded from his right to seek delay possession charges from the respondent-promoter.

G. Findings on the relief sought by the complainant:

G.I Direct the respondent to pay interest @ 18% p.a. as payment, towards delay in handing over the property in question as per provisions of The Real Estate (Regulation and Development) Act, 2016 ("RERA") and Haryana Real Estate (Regulation and Development) Rules, 2017 ("HRERA")

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

"Section 18: - Return of amount and compensation

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

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

24. Clause 11 of the buyer's agreement dated 20.02.2010 provides for handing over of possession and is reproduced below:

11.Possession

(a) Time for handing over the Possession

Subject to the terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to handover the possession of the unit within 36 months from the date of commencement of construction and development of the Unit. The allottee(s) agrees and understands that the Company shall be entitled to a grace period of six months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project.

25. **Due date of possession and admissibility of grace period:** The promoter has proposed to handover the possession of the said unit within 36 months from the date of commencement of construction and it is further provided in agreement that promoter shall be entitled to a grace period of six months for applying and obtaining completion certificate/occupation certificate in respect of said floor and/or project. The construction commenced on 31.07.2010 as per project details. The period of 36 months expired on

31.07.2013. Further, the complainant-builder has submitted that a grace period of 6 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 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.*

26. Therefore, in view of the above judgement and considering the provisions of the Act, the authority is of the view that, the promoter is entitled to avail grace period so provided in the agreement for applying and obtaining the

occupation certificate. Therefore, the due date of handing over of possession comes out to be 31.01.2014 including grace period of 6 months.

27. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is 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. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]
(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

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

28. 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.
29. 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., 20.09.2024 is @ 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e. 11.10%.
30. 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 11 of the buyer's agreement executed between the original allottee and respondent on 20.02.2010, the possession of the subject unit to handover within thirty-six months from the date of start of construction i.e., 31.07.2010 along with grace period of 6 months, for applying and obtaining the completion certificate/ occupation certificate in respect of the unit and/ or the project i.e., 31.01.2014 (inadvertently mentioned in the proceeding of the day 20.09.2024 as 31.07.2013, which is without adding grace period of 6 months). The complainants/subsequent allottees had been acknowledged as an allottee by the respondent vide endorsement letter dated 19.03.2019. Therefore, the complainant stepped into the shoes of original allottee on 19.03.2019 i.e., after the due date. It simply means that the complainant was well aware about the fact that the construction of the unit in question has not been completed and occupation certificate is yet to be obtained. However, he still chosen to proceed with the execution of the agreement voluntarily which means that the complainant had accepted the factum of the delay. Moreover, they have not suffered any delay as the subsequent allottee/complainant herein came into picture only on 19.03.2019 when the subject unit was endorsed in his favour. Hence, in such eventuality and in interest of natural justice, delayed possession charges can only be granted from the date of endorsement i.e., 19.03.2019 on which the complainant stepped into the shoes of the original allottee. The authority is of the view that in cases where the subsequent allottee had stepped into the shoes of original allottee after the due date of handing over possession, the delayed possession charges shall be granted w.e.f. date of nomination/endorsement in favour subsequent allottee. The occupation certificate was granted by concerned authority on 11.11.2020

and thereafter the possession of the subject unit was offered to the complainants on 20.11.2020. Copies of the same have placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject unit and it is failure on part of respondent to fulfil its obligations and responsibilities as per the buyer's agreement dated 20.02.2010 to handover the possession within the stipulated period.

31. 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 11.11.2020. The respondent offered the possession of the unit in question to the complainant on 21.11.2021. So, it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. The handover letter was given to the complainant on 25.01.2021. 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.
32. 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 complainant from the date of endorsement/nomination i.e., 19.03.2019 (inadvertently mentioned as "from due date of possession" in the proceedings dated

20.09.2024) till the date of offer of possession i.e., 20.11.2020 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/ promoter to return PLC charges of Rs.3,38,287/-, as per provisions of RERA and HRERA

33. That the financial liabilities between the allottee and the promoter come to an end after the execution of the conveyance deed except its statutory rights. 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.III Direct the respondent to pay Rs.50,000/- as litigation charges.

34. 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. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.

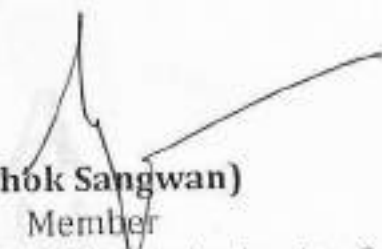
H. Directions of the authority

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

- i. The respondent/promoter is directed to pay delayed possession charges at the prescribed rate of interest 11.10% per annum for every month of delay on the amount paid by the complainant from the date of endorsement/nomination i.e., 19.03.2019 (inadvertently mentioned as "from due date of possession" in the proceedings dated 20.09.2024) till the date of offer of possession i.e., 20.11.2020 plus two months or the date of handing over whichever is earlier as per proviso to section 18(1) of the Act read with rule 15 of the rules. after adjusting the amount of Rs.32,499/- credited by respondent on account of early payment rebate.
- ii. The respondent shall not charge anything from complainant which is not part of buyer's agreement.

36. Complaint stands disposed of.

37. File be consigned to registry.


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 20.09.2024