

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

Complaint no.: 7323 of 2022
Date of first hearing: 27.04.2023
Date of order: 05.12.2024

1. Bidisha Biswas
2. Shailendra Kumar Sharma

Complainants

Both R/o: - Amber-110, Second Floor,
Emerald Hills Floor, Sector-65, Gurugram-
122101

Versus

Emaar MGF Land Ltd. presently known as
Emaar India Ltd.

Respondent

Regd. office at: Emaar MGF Business Park,
Mehrauli Gurgaon Road, Sikandarpur
Chowk, Sector-28 Gurugram-122002

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Varun Chugh (Advocate)
Shri Dhruv Rohtagi (Advocate)

Complainants
Respondent

ORDER

1. This complaint 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

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the provision of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.

A. Project and unit related details

2. The particulars of the project, the details of 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 Hills Floors", Sector 65, Gurugram, Haryana
2.	Nature of project	Residential
3.	DTCP License no.	i. 10 of 2009 dated 21.05.2009 valid up to 20.05.2019 ii. 113 of 2011 dated 22.12.2011 valid up to 20.12.2024
4.	Unit no.	110, Tower-Amber, 2 nd floor (As per page no. 20 of the complaint)
5.	Unit area	1380 sq. ft. (Super Area) (As on page no. 20 of the complaint)
6.	Date of execution of buyer's agreement	17.03.2010 (As per page no. 18 of the complaint)
7.	Agreement to sell	01.10.2014 (As per page no. 130 of the reply) 20.03.2018 (As per page no. 145 of the reply)
8.	Nomination letter	06.06.2018 (As per page no. 55 of the complaint)
9.	Possession clause	13. POSSESSION (a) Time of handing over the Possession Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Floor within 27 months from the date of execution of this agreement. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of six (6) months, for applying and obtaining the occupation certificate in respect of

		<i>the floor and/or the project.</i> (Emphasis supplied) (As on page no. 33 of the complaint)
10.	Due date of possession	17.12.2012 (Note: Due date to be calculated 27 months from the date of execution of the buyer's agreement i.e., 17.03.2010 plus grace period of 6 months)
11.	Total sale consideration	Rs.52,04,913/- (As per SOA on page no. 203 of the reply)
12.	Amount paid by the complainants	Rs.52,04,913/- (As per SOA on page no. 203 of the reply)
13.	Occupation certificate	30.05.2018 (As per page no. 167 of the reply)
14.	Offer of possession	21.08.2018 (As per page no. 56 of the complaint)
15.	Conveyance deed	02.11.2018 (As per page no. 66 of the complaint)
16.	Indemnity undertaking cum	05.09.2018 (As per page no. 175 of the reply)
17.	Unit handover letter	13.10.2018 (As on page no. 179 of the reply)

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:

- I. That initially, the property in question i.e., floor bearing no. EHF-267-A-SF-110 (Second Floor) admeasuring 267 sq. yds. in the project of the respondent i.e., Emaar India Limited, known as "Emerald Hills Floors" situated at Sector-65, Gurugram was booked by Sh. Harpreet Singh and Smt. Pushpinder Kaur.
- II. That thereafter, on 17.03.2010, the above-named persons entered into a builder buyer's agreement with the respondent, by virtue of which the respondent allotted the afore-mentioned unit along-with car parking space to them.

- III. That subsequent thereto, in October 2014, the above-named persons sold the property in question to Mr. Praveen Choudhary and Ms. Monica Choudhary from whom, the complainants herein had purchased the said property (Floor) and the property was later assigned to the complainants by virtue of the assignment letter dated 06.06.2018.
- IV. That, in the said buyer's agreement dated 17.03.2010, the respondent had categorically stated that the possession of the said floor would be handed over within 27 months from the date of signing of the builder buyer's agreement, with a further grace period of another 6 months. Moreover, at the time of transferring the floor in question, the complainants were further coerced by the respondent to sign affidavits/indemnity-cum-undertaking, in favour of the respondent wherein the complainants were required to undertake, not to claim or raise any compensation delay in handing over possession of the property.
- V. That, the said buyer's agreement and the indemnity cum undertaking are totally one sided, which impose completely biased terms and conditions upon the complainants, thereby tilting the balance of power in favour of the respondent, which is further manifested from the fact that the delay in handing over the possession by the respondent would attract only a meagre penalty of Rs.10/- 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.10/- per sq. ft. and 15% penal interest per annum compounded quarterly on the unpaid amount of instalment due to the respondent.
- VI. That the floors were sold by representing that the same will be luxurious ones however all such representations seem to have been made in order

- to lure complainants to purchase the floor at extremely high prices. There are various deviations from the initial representations.
- VII. That the respondent has breached the fundamental term of the contract by inordinately delaying in delivery of the possession by 74 months. It is pertinent to mention here that the possession of the property in question was finally offered on 21.08.2018.
- VIII. That the complainants without any default, had been timely paying the instalments towards the property, as and when demanded by the respondent towards the aforesaid residential floor 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 their name on 02.11.2018.
- IX. That the respondent had promised to complete the project by June 2012, excluding the grace period of six months. 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 Act of 2016. In fact, the respondent has even failed to provide compensation as per the terms of the builder buyer's agreement for the entire period of delay in handing over the possession of the unit.
- X. That the respondent has not acknowledged the requests of the complainants in regard to the delayed compensation. In fact, the promised amenities are missing. The complainants were made to make advance deposit on the basis of information contained in the brochure which is false on the face of it.
- XI. 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 complainants therefore, seek direction to the respondent to pay interest @ 18% p.a. as payment, towards delay in handing over the property in question.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):

- I. Direct the respondent to pay the interest @ 18% p.a. as payment, towards delay in handing over the property in question as per provisions of the Act of 2016 and Rules, 2017;
 - II. Direct the respondent to pay a sum of Rs.50,000/- to the complainants 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 instant complaint is barred by limitation. It is also pertinent to mention that the complainants filed the complaint before the Authority after the execution of the conveyance deed as all the terms and conditions as per the buyer's agreement stands fulfilled in the eyes of law. It is also submitted that the present complaint has been filed only to harass the respondent and extort money. The complainants having received the offer of possession on 21.08.2018 and having executed the conveyance deed on 02.11.2018 have filed the present complaint on 18.11.2022, i.e., after a lapse of 4 years 3 months from the date of offer



of possession and 4 years from the date of execution of conveyance deed. The complaint is admittedly belated and barred by limitation period of 3 years. In view of the facts as stated above, the present complaint deserves to be dismissed with heavy costs.

- ii. That there is no grievance that can be raised by the complainants, who are admittedly the subsequent allottees, having come into the picture belatedly, after the due date of possession on 06.06.2018. The unit in question already stood complete in all respects even before the complainants got the unit transferred in their favour, as the occupation certificate already stood applied for on 26.02.2018, 14.03.2018 and 19.04.2018 and the same was received on 30.05.2018, just 2 weeks after the complainants got the unit endorsed in their favour. The offer of possession, admittedly was issued on 21.08.2018 and the unit was handed over on 13.10.2018. Therefore, there is no prejudice, harassment and delay that has been caused to the complainants and as such, they are not entitled to any delay interest whatsoever.
- iii. That the present complaint is not maintainable for the simple reason that the complainants have no right for grant of the relief whatsoever. The complainants are subsequent allottees, having purchased the unit in question from erstwhile allottees, namely, Mr. Praveen Chaudhary and Mrs. Monica Choudhary, vide agreement to sell dated 20.03.2018. Thus, in view of the own inter-se arrangement between the complainants and the erstwhile allottees (who were the first party in the agreement to sell dated 20.03.2018), the complainants cannot maintain the present complaint. The said submissions are without prejudice to the submission that the present complaint is barred by limitation and that there is no delay in handing over possession of the unit to the



- complainants. It is also relevant to submit that the respondent is not bound by the internal arrangements between the erstwhile and subsequent allottees, as the respondent was not a party to the said agreement to sell entered into between the allottees.
- iv. 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 Hon'ble Authority and can only be adjudicated by the Civil Court. The present complaint deserves to be dismissed on this ground alone.
- v. That it needs to be highlighted that the original allottees, subsequent allottees as well as the complainants were not forthcoming with the outstanding amounts as per the schedule of payments. The respondent was constrained to issue reminders to the original allottees. The respondent had categorically notified the original allottees that they had defaulted in remittance of the amounts due and payable by them. It was further conveyed by the respondent to the original allottees that in the event of failure to remit the amounts mentioned in the said notice, the respondent would be constrained to cancel the provisional allotment of the unit in question.
- vi. That subsequently, the respondent sent the buyer's agreement to the original allottees, which was executed between the parties on 17.03.2010. Thereafter the original allottees executed an agreement to sell dated 01.10.2014 in favour of the subsequent allottees, i.e., Mr. Praveen Choudhary and Ms. Monica Choudhary for transferring and

- conveying rights, entitlement and title of the original allottees in the unit in question to the subsequent allottees.
- vii. That the respondent at the time of endorsement of the unit in question in their favour, had specifically indicated to the subsequent allottees that the original allottees had defaulted in timely remittance of the installments pertaining to the unit in question and therefore, have disentitled themselves for any compensation/interest. The respondent had conveyed to the subsequent allottees that on account of the defaults of the original allottees, the subsequent allottees would not be entitled to any compensation for delay, if any. That in the manner as aforesaid, the subsequent allottees stepped into the shoes of the original allottees.
- viii. That thereafter the subsequent allottees executed an agreement to sell dated 20.03.2018 in favour of the complainants i.e., Ms. Bidisha Biswas and Mr. Shailendra Kumar Sharma for transferring and conveying rights, entitlement and title of the subsequent allottees in the unit in question to the complainants.
- ix. That the complainants further executed an indemnity cum undertaking dated 03.05.2018 and an affidavit dated 03.05.2018 whereby the complainants had consciously and voluntarily declared and affirmed that they would be bound by all the terms and conditions of the provisional allotment in favour of the subsequent allottees. It was further declared by the complainants that having been substituted in the place of the subsequent allottees, they were not entitled to any compensation for delay, if any, in delivery of possession of the unit in question or any rebate under a scheme or otherwise or any other discount, by whatever name called, from the respondent. Similarly, the subsequent allottees had also executed an indemnity cum undertaking

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and an affidavit on the same lines. Further, the respondent issued the nomination letter dated 06.06.2018 in favour of the complainants. Furthermore, the respondent, at the time of endorsement of the unit in question in their favour, had specifically indicated to the complainants that the subsequent allottees and the original allottees had defaulted in timely remittance of the installments pertaining to the unit in question and therefore, have disentitled themselves for any compensation/interest. The respondent had conveyed to the complainants that on account of the defaults of the subsequent allottees as well as the original allottees, the complainants would not be entitled to any compensation for delay, if any. That in the manner as aforesaid, the complainants stepped into the shoes of the subsequent allottees.

- x. That thereafter, the complainants availed the loan facility from the ICICI Bank Limited and the respondent issued a letter dated 19.06.2018 to the concerned bank. It is further submitted that other loan documents were also executed by the complainants, the respondent and the bank. The present complaint is liable to be dismissed for non-joinder of the ICICI Bank.
- xi. That the respondent on receipt of the occupation certificate dated 30.05.2018, offered possession of the said unit to the complainants vide the letter of offer of possession dated 21.08.2018 subject to making payments and submission of necessary documents. That an indemnity cum undertaking for possession dated 05.09.2018 was executed between the parties on the mutual agreed terms and conditions. The complainants have duly taken the possession of the unit in question. The conveyance deed in respect of the unit in question has also been executed. That it is pertinent to mention that after execution of the unit



handover letter and obtaining of possession of the unit in question and after the execution of the conveyance deed, the complainants are left with no right, entitlement or claim against the respondent. The transaction between the complainants and the respondent stands concluded and no right or liability can be asserted by the respondent or the complainants against the other. The instant complaint is a gross misuse of process of law. The contentions advanced by the complainants in the false and frivolous complaint are barred by estoppel. It may be submitted that an amount of Rs.1,04,990/- has been credited in the account of the complainants as benefit of anti-profiting. The present complaint has been filed with malafide intent to extort more and more money from the respondent.

- xii. That the terms and conditions set out in the buyer's agreement clearly provided compensation to be paid in the event of delay in handing over of the possession and the complainants after having understood the clauses had executed the agreement to sell dated 20.03.2018 and therefore, the relief being claimed by the complainants did not take into account the contractual position and as such the relief claimed is not maintainable before the Hon'ble Authority. The complainants have duly benefitted and admittedly received the amounts already agreed upon. The complainants have failed to honour the payment schedule and consequent thereto, are not entitled to any benefit towards delay penalty charges. Clearly the complainants are now becoming greedy and trying to extort excessive amounts from the respondent.
- xiii. That the complaint is also liable to be dismissed for the reason that for the unit in question, the buyer's agreement was executed on 17.03.2010 i.e., prior to coming into effect of the Act and the Rules. As such, the

terms and conditions of the buyer's agreement executed prior to the applicability of the Act and the Rules, would prevail and shall be binding between the parties. In view thereof, the Hon'ble Authority has no jurisdiction to entertain the present complaint as the complainants have no cause of action to file the present complaint under the Act/Rules.

- xiv. The complainants had opted for a payment plan at the time of booking of the unit in question that was construction linked and had agreed and undertaken to pay the installments as and when demanded by the respondent. The complainants were provided with the terms and conditions of provisional allotment and the complainants were given the opportunity to familiarize themselves with the same. Further, at time of execution of the nomination letter, it was also in the knowledge of the complainants that subject to timely payment of all amounts payable by the complainants and subject to reasons beyond the control of the respondent, possession of the unit was proposed to be offered by the respondent, within 27 months from the date of execution of the buyer's agreement along with 6 months grace period.
- xv. That the respondent was faced with certain other force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. It is pertinent to state that the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide order dated 02.11.2015 mining activities by the newly allotted

mining contracts by the state of Haryana was stayed on the Yamuna river bed. These orders in fact *inter-alia* continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High courts and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was almost for 2 years that the scarcity as detailed aforesaid continued, despite which all efforts were made and materials were procured at 3-4 times the rate and the construction continued without shifting any extra burden to the customer. The time taken by the respondent to develop the project is the usual time taken to develop a project of such a large scale. Further, the parties have agreed that in the event of delay, the allottee shall be entitled to compensation on the amount paid by the allottee, which shall be adjusted at the time of handing over of possession/execution of conveyance deed subject to the allottee not being in default under any of the terms of the buyer's agreement.

- xvi. That despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. The respondent had applied for occupation certificate and obtained the same vide memo bearing no. 5753 dated 30.05.2018. 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

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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 utilized by the statutory authority to grant occupation certificate to the respondent is necessarily required to be excluded from computation of the time period utilized for implementation and development of the project.

- xvii. That the complainants have purchased the unit, in question as a speculative investment. The complainants never intended to reside in the said unit and have admittedly booked the same with a view to earn a huge profit from resale of the same. Thus, the complainants are not bona fide "Allottees" under the Act and the Rules, but are "Investors".
- xviii. That without admitting or acknowledging the truth or legality of the allegations advanced by the complainants and without prejudice to the contentions of the respondent, it is respectfully submitted that the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. It is further submitted that merely because the Act applies to ongoing projects, as defined therein, which are registered with the authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainants for seeking interest or compensation cannot be called in to aid in derogation and ignorance of the provisions of the agreement.
- xix. It is submitted that the complainants at the time of entering into the shoes of the subsequent allottees were well aware of the delay caused in the said project but despite considering all the facts, have purchased the

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said unit under no undue influence or coercion and now cannot act with blind eyes. It is further submitted that the complainants have consciously defaulted in their obligations as enumerated in the buyer's agreement as well as under the Act. The complainants cannot be permitted to take advantage of his own wrongs. It is pertinent to note that an offer for possession marks termination of the period of delay, if any. The complainants are not entitled to contend that the alleged period of delay continued even after receipt of offer for possession therefore, the instant complaint constitutes a gross misuse of process of law.

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

E. Jurisdiction of the authority:

8. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.1 Territorial jurisdiction

9. As per notification no. *1/92/2017-ITCP 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.

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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

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(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 of 2016 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. Finding on objections raised by the respondent:

F.I Objections regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act

12. Another contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the buyer's agreement executed between the parties as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-

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written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)** decided on 06.12.2017 which provides as under:

*"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter...
122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."*

13. Also, in appeal no. 173 of 2019 titled as **Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed:

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided

in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

14. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer's agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

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

15. The respondent has raised an objection that the instant complaint is barred by estoppel as upon execution of conveyance deed dated 02.11.2018, the complainants are now estopped from raising these belated claims/demands as they themselves had acknowledged and accepted that *"that the vendee shall not raise any objection or make any claims on account of inconvenience, if any, which may be alleged to be suffered by the vendee due to such developmental/construction or its incidental/related activities."*
16. The Authority observed that though the conveyance deed has been executed on 02.11.2018 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 17.12.2012 but the same was offered on

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21.08.2018 after a delay of more than 6 years. In the present complaint, the complainants-allottee has stepped into the shoes of original allottee vide nomination letter dated 06.06.2018. The definition of allottee as defined in Act of 2016 is reproduced below for ready reference:

"2(d) 'allottee' in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

17. In view of the above definition, the complainants became allottee on 06.06.2018. 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.III Objection regarding the complainants being investors.

18. The respondent took a stand that the complainants are investors and not consumers and therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the flat buyer's agreement, it is revealed that the complainants are buyers and they have paid a total price of Rs.52,04,913/- to the promoter towards purchase of a unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

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"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

19. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainants, it is crystal clear that the complainants are allottees as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred to in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of the promoter that the allottee being investor is not entitled to protection of this Act also stands rejected.

F.IV Objection regarding the complaint barred by Limitation Act, 1963.

20. Another contention of the respondent is that the offer of possession was made in August 2018, the period of limitation has come to an end in the year August 2021. But the period from 15.03.2020 to 28.02.2022 was quoted as zero period vide order dated 10.01.2022 of the Hon'ble Apex Court in M.A. No. 21 of 2022 of suo-moto writ petition Civil No. 3 of 2020. And the complaint is within limitation after computing the said zero period allowed by the Supreme Court of India. Thus, the contention of promoter that the complaint is time barred by provisos of Limitation Act stands rejected.

F.V Objection regarding non-joinder of ICICI Bank as necessary party.

21. The respondent has raised a contention that the filing of present complaint without making HDFC Bank as a party to the same is bad in eyes of law as the complainants have availed a loan of Rs.70,00,000/- from the financial institution. Though a loan of Rs.70,00,000/- was offered by the bank to the

complainants vide offer letter dated 19.06.2018. But no loan amount was disbursed by the bank to the complainants as per the documents available on record. Therefore, there is no privity of contract between the parties and there is no need to make the HDFC bank a party to the present complaint. Thus, the contention of the promoter stands rejected.

G. Finding on the relief sought by the complainants:

G.1 Direct the respondent to pay the interest @ 18% p.a. as payment, towards delay in handing over the property in question as per provisions of the Act of 2016 and Rules, 2017;

22. In the present complaint, the complainants intends 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."*

23. Clause 13(a) of buyer's agreement dated 17.03.2010 provides for handing over of possession and is reproduced below:

13. POSSESSION

(a) Time of handing over the Possession

Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Floor within 27 months from the date of execution of this agreement. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of six (6) months, for applying and obtaining the occupation certificate in respect of the floor and/or the project,

(Emphasis supplied)

24. The Authority has gone through the possession clause of the agreement and observes that the respondent-developer proposes to handover the

possession of the allotted unit within a period of 27 months from the date of execution of agreement with grace period of 6 months.

25. The said grace period is allowed in terms of order dated 08.05.2023 passed by the Hon'ble Appellate Tribunal in *Appeal No. 433 of 2022 tilted as Emaar MGF Land Limited Vs Babia Tiwari and Yogesh Tiwari* wherein it has been held that if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the 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 placed at page no. 317 of the paper book reveals that the appellant-promoter has applied for grant of Occupation Certificate on 21.07.2020 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 the delay. In our opinion if the allottee wishes to continue with the project, he accepts the term 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 the provisions in clause 11 (a) of the agreement, the total completion 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 the 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 17.12.2012 including grace period of 180 days.

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27. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants 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. 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., 05.12.2024 is @ 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

30. 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.

31. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter

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which is the same as is being granted to them in case of delayed possession charges.

32. The complainants in the present complaint are subsequent allottees and had purchased the apartment in question from the erstwhile allottees and thereafter, the respondent had acknowledged the same vide nomination letter dated 06.06.2018. The Authority has decided the same issue on 24.09.2024 in *complaint no. CR/ No. 1760 of 2022 case titled as Monika Sharma and Pankaj Kumar Jangid Vs Emaar India Limited*, wherein it was held that the complainant-allottee is entitled for delay possession charges from the date of nomination letter till offer of possession after obtaining occupation certificate plus two months or actual handing over of possession, whichever is earlier. The relevant para of said order is extracted below:

30. *The authority is of the view that the time period for handing over the possession as committed by the builder as per the relevant clause of builder buyer's agreement and the commitment of the promoter regarding handing over of possession of the unit is taken accordingly. The new timeline indicated in respect of ongoing project by the promoter while making an application for registration of the project does not change the commitment of the promoter to hand over the possession by the due date as per the builder buyer's agreement and the promoter is liable for the consequences and obligations arising out of failure in handing over possession by the due date as committed by him in the builder buyer's agreement and is liable for the delayed possession charges as provided in proviso to section 18(1) of the Act. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. The same issue has been dealt by Hon'ble Bombay High Court in case titled as Neelkamal Realtors Suburban Pvt. Ltd. (supra) wherein it was held that the RERA Act does not contemplate rewriting of contract between the allottee and the promoter. The relevant para of the judgement is reproduced below:*

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.

31. *However, complainants were well aware about the fact that the construction of the tower where the subject unit is situated has not been completed and*



occupation certificate qua that part of project is yet to be obtained. Further, they still chosen to proceed with 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/complainants herein came into picture only on 04.12.2017 when the subject unit was endorsed in his favour. Hence, in such an eventuality and in the interest of natural justice, delay possession charges can only be granted to the complainant from the date of nomination dated 04.12.2017 i.e., date on which the complainant stepped into the shoes of the original allottee.

33. Thus, the complainants are entitled to delayed possession charges w.e.f. 06.06.2018 i.e., date on which the complainants stepped into the shoes of the original allottees.
34. On consideration of the documents available on record and submissions made by both the parties 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. The due date of handing over possession is 17.12.2012 but the offer of possession was made on 21.08.2018 and the conveyance deed was executed on 02.11.2018. 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 the date of nomination letter i.e., 06.06.2018 till offer of possession (21.08.2018) after obtaining occupation certificate plus two months i.e., 21.10.2018 or actual taking over of possession i.e., 13.10.2018, whichever is earlier at prescribed rate i.e., 11.10 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules. Since the physical possession has been taken over on 13.10.2018 being earlier, the complainants are entitled for delayed possession charges from 06.06.2018 to 13.10.2018.

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G.II Direct the respondent to pay an amount of Rs.50,000/- to the complainants as cost of present litigation.

35. The complainants are seeking relief w.r.t. compensation in the above-mentioned reliefs. The 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.*, 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, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainants may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

H.Directions of the authority:

36. 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 interest to the complainants against the paid-up amount at the prescribed rate i.e. 11.10% p.a. for every month of delay from the date of nomination letter i.e., 06.06.2018 till handing over of possession i.e., 13.10.2018, being earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.





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- ii. A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.

37. Complaint stands disposed of.

38. File be consigned to registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.12.2024

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