

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

Complaint no.: 5841 of 2022  
Date of filing: 29.08.2022  
Date of Order: 05.12.2024

1. Akansha Pandey  
2. Ashwani Kumar Mishra  
R/o: - EHF-267-A-SF-061, Emerald Hills  
Floors, Sector-65, Gurugram-122002

**Complainants**

Versus

M/s Emaar India Limited  
Regd. Office: - Emaar MGF Business Park,  
Mehrauli Gurgaon Road, Sikandarpur  
Chowk, Sector-28 Gurugram-122002

**Respondent**

**CORAM:**  
Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**  
Shri Varun Chugh (Advocate)  
Shri Ishaan Dang (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 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. 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 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.	RERA registration	162 of 2017 dated 29.08. 2017 valid up to 28.08.2022
5.	Unit no.	EHF-267-A-SF-061, Tower-Amber, 2 <sup>nd</sup> floor (As per page no. 23 of the reply)
6.	Unit area	1380 sq. ft. (Super Area) (As on page no. 15 of the complaint)
7.	Date of provisional allotment	16.07.2009 (As per page no. 23 of the reply)
8.	Date of execution of buyer's agreement	17.03.2010 (As per page no. 13 of the complaint)
9.	Agreement to sell	24.02.2018 (As per page no. 92 of the reply)
10.	Date of tripartite agreement	10.03.2018 (As per page no. 152 of the reply)
11.	Nomination letter	12.04.2018 (As per page no. 44 of the complaint)
12.	Possession clause	<b>13. POSSESSION</b> <b>(i) Time of handing over the Possession</b> <i>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</i>

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		<p><i>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 three months, for applying and obtaining the occupation certificate in respect of the floor and/or the project.</i></p> <p>(Emphasis supplied) (As on page no. 28 of the complaint)</p>
13.	Due date of possession	17.09.2012 (Note: Due date to be calculated 27 months from the date of execution of buyer's agreement i.e., 17.03.2010 plus grace period of 3 months)
14.	Total sale consideration	Rs.50,22,718/- (As per SOA on page no. 89 of the reply)
15.	Amount paid by the complainants	Rs.50,22,717/- (As per SOA on page no. 89 of the reply)
16.	Occupation certificate	09.05.2019 (As per page no. 103 of the reply)
17.	Offer of possession	11.05.2019 (As per page no. 45 of the complaint)
18.	Indemnity cum undertaking	04.06.2019 (As per page no. 148 of the reply)
19.	Unit handover letter	02.07.2019 (As on page no. 111 of the reply)
20.	Conveyance deed	10.07.2019 (As per page no. 116 of the reply)

**B. Facts of the complaint:**

3. The complainants have made the following submissions:

1. That initially, the property in question i.e., floor bearing no. EHF-267-A-SF-061 admeasuring 267 sq. yds. in the project of the respondent i.e., Emaar India Limited known as "Emaar Hills Floors" situated at Sector-65, Gurugram was booked by Mr. Sudhakar Chaudhary and Ms. Manisha Chaudhary.

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- 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 in the project of the respondent.
- III. That subsequent thereto, the complainants herein, entered into an agreement with original allottees to purchase the said property and the property was later assigned to the complainant and her husband as co-applicant, by the respondent, by virtue of the assignment letter.
- 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 for 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 unit, 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 property was sold by representing the same will be luxurious floors 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 84 months. It is pertinent to mention here that the possession of the property in question was finally offered on 11.05.2019.
- 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 names on 10.07.2019.
- IX. That the respondent had promised to complete the project by December, 2012, including the grace period of six months. The buyer's agreement was executed on 17.03.2010 and the possession was offered not prior to 11.05.2019 resulting into considerable delay of 84 months in handing over the possession of the property.
- X. 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 Act of 2016. 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 complainants, who sought compensation for the entire period of delay in handing over the possession of the unit.
- XI. 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.

- XII. That 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 with the Authority.
- XIII. 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 floor in question and not giving the interest and compensation to the buyers.
- XIV. 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, seeking 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 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 contested the complaint on the following grounds:

- I. That the present complaint is not maintainable before this Hon'ble Authority. The complainants have filed the present complaint seeking, inter alia, interest for alleged delay in delivering possession of the apartment purchased by the complainants.
- II. That the complainants have got no locus standi or cause of action to file the present complaint after execution of conveyance deed. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 17.03.2010, as shall be evident from the submissions made in the following paras of the present reply.
- III. That the complainants are estopped by their own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. It is submitted that the complainants have already obtained possession of the unit in question and have, further, executed a conveyance deed regarding the unit in question. The transaction between the complainants and the respondent is complete. The reliefs sought in the false and frivolous complaint are barred by estoppel.
- IV. That the complainants are not 'aggrieved persons' under the Act but are investors who have booked the unit in question in order to earn profit from its resale or earn rental income therefrom. The complainants have not purchased the unit in question with a view to reside in the same. It

is most respectfully submitted that the Act has not been enacted to protect the interest of investors. As the said Act has not defined the term "consumer", therefore, the definition of "consumer" as provided under the Consumer Protection Act, 1986 has to be referred for adjudication of the present complaint. A bare reading of the definition of the definition of "consumer" makes the present complaint as not maintainable, as such, the present complaint merit dismissal.

- V. 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.
- VI. That the instant complaint is barred by limitation. The complainants have alleged that the respondent was obligated to offer possession of the unit in question by 2013 and by way of the instant complaint have sought interest for indemnifying them for the alleged delay in delivery of the unit in question. It is submitted that cause of action, if any, for seeking interest accrued in favor of the complainants in 2013 and consequently the instant complaint is barred by limitation. In any event, it is submitted that the complainants had obtained possession of the unit in question on 02.07.2019 and thereafter have executed a conveyance deed dated 10.07.2019. The instant complaint for seeking interest has been preferred in August, 2022 and the same has been instituted beyond the limitation period. Thus, the instant complaint is liable to be dismissed in limine.



- VII. That the complainants have not come before this Hon'ble Authority with clean hands and have suppressed vital and material facts from this Hon'ble Authority. The correct facts are set out in the succeeding paras of the present reply.
- VIII. That initially Propshopee Pvt. Ltd. i.e., the original allottee had approached the respondent and expressed an interest in booking an apartment in its upcoming residential project "Emerald Floors - Emerald Hills" situated in Emerald Estate, Sector 65, Gurgaon. The original allottee vide application form dated 04.06.2009 applied to the respondent for provisional allotment of a unit in the project. The original allottee, in pursuance of the aforesaid application form, was allotted an independent unit bearing no EHF-267-A-SF-061, located on the second floor, in the said project vide provisional allotment letter dated 16.07.2009. The original allottee consciously and willfully opted for a construction linked plan for remittance of the sale consideration for the unit in question.
- IX. That thereafter the original allottee transferred the unit in question to Mr. Sudhakar Chaudhary and Ms. Manisha Chaudhary i.e., the "erstwhile allottees". All the obligations and duties of the original allottee pertaining to the allotment of the unit in question were consciously and voluntarily assumed by the erstwhile allottees upon transfer of the allotment of the said unit in their name.
- X. That a buyer's agreement dated 17.03.2010 was executed between the erstwhile allottees and the respondent. It is submitted that the erstwhile allottees, at the time of seeking allotment of the unit in question, represented and assured the respondent that they would abide by all the terms and conditions of the buyer's agreement. The respondent had no reason to suspect the bona-fide of the erstwhile allottees and



proceeded to allot the unit in question in their favour. However, the erstwhile allottees defaulted in timely remittance of installments on time.

- XI. That thereafter the complainants approached the erstwhile allottees for purchasing their rights and title in the unit in question. The erstwhile allottees acceded to the request of the complainants and agreed to transfer and convey their rights, entitlement and title in the unit in question to the complainants.
- XII. That additionally the complainants solemnly affirmed and admitted that having been substituted in the place of the erstwhile allottees in respect of the provisional allotment of the unit in question, they are 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. The complainants further executed an indemnity cum undertaking dated 26.03.2018 in this regard. It is manifested that the respondent had changed its position to its detriment by relying upon the aforesaid representations of the complainants. Thus, the instant complaint is barred by estoppel.
- XIII. That it is pertinent to mention that prior to approaching the respondent, the complainants had conducted extensive and independent enquiries regarding the project and it was only after the complainants were fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondent to undertake development of the same, that the complainants took an independent and informed decision to purchase the unit from the erstwhile allottees, uninfluenced in any manner by the respondent. The complainants further represented to the respondent that the complainants would remit every

instalment and any other charge/demand pertaining to the unit in question on time. The respondent had no reason to suspect the bonafides of the complainants at the relevant and proceeded to issue nomination letter dated 12.04.2018. The complainants further undertook to be bound by the terms and conditions of the buyer's agreement.

- XIV. That however the complainants willfully and consciously defaulted in timely remittance of the instalments. Statement of account correctly maintained by the respondent in due course of its business dated 03.11.2022 depicting delay in remittance of various payments by the complainants.
- XV. That without prejudice to submissions of the respondent, delayed possession interest if any has to be calculated from the date when subsequent allottee entered into the shoes of the original allottee i.e., 04.12.2017 and not from the date of due date of possession.
- XVI. That without prejudice to the foregoing, it needs to be highlighted that clause 15 of the buyer's agreement provides that compensation for any delay in delivery of possession shall only be given to such allottees who are not in default of their obligations envisaged under the agreement and who have not defaulted in payment of instalments as per the payment plan incorporated in the agreement. In case of delay caused due to non- receipt of occupation certificate, completion certificate or any other permission/sanction from the competent authorities, no compensation or any other compensation shall be payable to the allottees. As delineated hereinabove, the complainants as well as the erstwhile allottees, having defaulted in timely remittance of instalment are thus not entitled to any compensation or any amount towards

interest as an indemnification for delay, if any, under the buyer's agreement.

XVII. That it is respectfully submitted that the rights and obligations of the complainants as well as respondent are completely and entirely determined by the covenants incorporated in the buyer's agreement. It is submitted that as per clause 13' of the buyer's agreement the time period for delivery of possession was 27 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 the 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. It is further provided therein that the time period for delivery of possession of the unit shall stand extended on occurrence of circumstances/reasons which are beyond the power and control of the respondent. 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 is categorically provided therein 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 respondent's discretion till the payment of all outstanding amounts to the satisfaction of respondent. Since, the complainants have defaulted in timely remittance of payments as per schedule of payment, the date of delivery of possession is not liable to be determined in the manner sought to be done in the present case by the complainants.

- XVIII. That without admitting or acknowledging in any manner the legality or truth of the allegations levelled by the complainants and without prejudice to the contentions of respondent, it is submitted that the time period utilised by the concerned statutory authority to grant occupation certificate to respondent needs to be necessarily excluded from computation of the time period for implementation of the project. Furthermore, no compensation or interest or any other amount can be claimed for the period utilised by the concerned statutory authority for issuing occupation certificate in terms of the buyer's agreement. The respondent had submitted an application dated 04.04.2019 for issuance of occupation certificate before the concerned statutory authority. Occupation certificate was thereafter issued in favour of the respondent vide memo bearing no. 4163 dated 09.05.2019.
- XIX. That without admitting or acknowledging the truth or legality of the allegations advanced by the complainants and without prejudice to the contentions of 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 of 2016. It is further submitted that merely because the Act applies to ongoing projects 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 cannot be called in to aid in derogation and ignorance of the provisions of the buyer's agreement. The interest is compensatory in nature and cannot be granted in derogation and ignorance of the provisions of the buyer's agreement.
- XX. That the respondent had offered possession of the unit in question through letter of offer of possession dated 11.05.2019 to the

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complainants. The respondent had requested the complainants to remit the amounts mentioned in the said letter and obtain possession of the unit in question. However, the complainants delayed the matter for reasons best known to them.

- XXI. That eventually the complainants obtained possession of the unit in question and a unit handover letter dated 02.07.2019 was executed by the complainants. It is submitted that prior to execution of the unit handover letter, the complainants had satisfied themselves regarding the measurements, location, dimension, development etc. of the unit in question. Furthermore, the complainants have executed a conveyance deed dated 10.07.2019. Therefore, the transaction between the complainants and the respondent has been concluded in July, 2019 and no right or liability can be asserted by respondent or the complainants against the other. The present complaint is nothing but a gross misuse of process of law.
- XXII. That without prejudice to the contentions of the respondent, it is submitted that the allegations of the complainants the possession was to be delivered by 2013 are wrong, malafide and result of afterthought in view of the fact that the complainants had made several payments to respondent even after 2013. In fact the unit in question had been purchased by the complainants in 2018 i.e., 5 years after the alleged due date for delivery of possession of the unit in question. It is submitted that if there was a delay in delivery of project as alleged by the complainants, than the complainants would not have proceeded to purchase the unit in question.
- XXIII. That the complainants had purchased the unit in question as a speculative investment. The complainants never intended to reside in the same and intended to earn huge profits from re-selling the said unit.

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The complainants however, failed in achieving their unilaterally contemplated profits and have preferred the instant complaint in order to blackmail the respondent.

XXIV. That it needs to be highlighted that the respondent has credited an amount of Rs.1,82,254/- on account of anti-profiting to the account of the complainants as a gesture of goodwill. The aforesaid amount has been accepted by the complainants in full and final satisfaction of their alleged grievances and accordingly the complainants had proceeded to execute the conveyance deed after receipt of the aforesaid amount. 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 or any taxes/ statutory payments etc.

XXV. That the present complaint is bad for non-joinder of HDFC Bank as a party. The complainants had availed a housing loan from HDFC Bank by mortgaging the unit in question. Tripartite agreement dated 10.03.2018 is the evidence of this fact. The complainants are estopped from claiming any amounts from the respondent in view of the loan availed by the complainants. The complainants had specifically subrogated all their rights for refund/ compensation/ interest with respect to the unit in question in favour of HDFC Bank. Therefore, prosecution of the instant complaint without making HDFC Bank a party is bad in law.

XXVI. That it is submitted that several allottees, including the complainants, have defaulted in timely remittance of payment of installments which was an essential, crucial and an indispensable requirement for conceptualisation and development of the project in question.

Furthermore, when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially whereas enormous business losses befall upon the respondent. The respondent, despite default of several allottees, has diligently and earnestly pursued the development of the project in question and has constructed the project in question as expeditiously as possible. It is submitted that the construction of the tower in which the unit in question is situated is complete and the respondent has already delivered possession of the unit in question to the complainants. Even conveyance deed in respect of the same has also been registered in favor of the complainants. Therefore, there is no default or lapse on the part of the respondent and there is no equity in favour of the complainants. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainants are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

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 submissions 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 has complete territorial and

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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, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

**E.II Subject-matter Jurisdiction**

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)(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.I 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

10.07.2019, 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 observed that though the conveyance deed has been executed on 10.07.2019 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 17.09.2012 but the same was offered on 11.05.2019 after a delay of almost 7 years. In the present complaint, the complainants-allottee has stepped into the shoes of original allottee vide nomination letter dated 12.04.2018. 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;"*

14. In view of the above definition, the complainants became allottee on 12.04.2018. 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.II Objection regarding the complainants being investors.**

15. 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.50,22,717/- 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:

*"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;"*

16. 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.III Objection regarding the complaint barred by Limitation Act, 1963**

17. Another contention of the respondent is that the offer of possession was made in May 2019, the period of limitation has come to an end in the year May 2022. 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.IV Objection regarding non-joinder of HDFC Bank as necessary party.**

18. 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.78,00,000/- from the financial institution. Though a tri-partite agreement dated 10.03.2018 was executed between the complainants, respondent and HDFC bank and in lieu of the same the complainants have approached the financial institution to avail a loan of Rs.78,00,000/-. But no loan agreement has been executed between the parties and 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. Findings on the relief sought by the complainants:**

**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 Act of 2016 and Rules, 2017.**

19. 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."*

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

**13. POSSESSION**

**(i) 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 three months, for applying and obtaining the occupation certificate in respect of the floor and/or the project.*

*(Emphasis supplied)*

21. 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 3 months.

22. 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."*

23. 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 17.09.2012 including grace period of 90 days.

24. **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.

25. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
26. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 05.12.2024 is @ 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
27. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.
28. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
29. The complainants in the present complaint are subsequent allottees and had purchased the apartment in question from the original allottees and thereafter, the respondent had acknowledged the same vide nomination letter dated 12.04.2018. 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.*

30. Thus, the complainants are entitled to delayed possession charges w.e.f. 12.04.2018 i.e., date on which the complainants stepped into the shoes of the original allottees.





31. 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 of possession comes to 17.09.2012 but the offer of possession was made on 11.05.2019 and conveyance deed was executed on 10.07.2019. 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., 12.04.2018 till offer of possession (11.05.2019) after obtaining occupation certificate plus two months i.e., 11.07.2019 or actual taking over of possession i.e., 02.07.2019, 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 02.07.2019 being earlier, the complainants are entitled for delayed possession charges from 12.04.2018 to 02.07.2019.

**G.II Direct the respondent to pay an amount of Rs. 1,00,000/- to the complainants as cost of present litigation.**

32. 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:**

33. 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., 12.04.2018 till handing over of possession i.e., 02.07.2019, being earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- 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.

34. Complaint stands disposed of.

35. File be consigned to registry.

**Dated: 05.12.2024**

  
**(Vijay Kumar Goyal)**  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram