

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,  
GURUGRAM****Date of decision: 10.12.2024**

NAME OF THE BUILDER		M/s Emaar MGF Land Limited	
PROJECT NAME		"Gurgaon Greens", Sector- 102, Gurugram, Haryana	
S. No.	Case No.	Case title	Appearance
1.	CR/6507/2022	Mrs. Sunanda Shivpuri V/S M/s Emaar MGF Land Limited	Adv. Jagdeep Kumar (Complainant) Adv. Harshit Batra (Respondent)
2.	CR/1871/2023	Mr. Abhishek Mohal & Mrs. Deepika Bansal V/S M/s Emaar MGF Land Limited	Adv. Jagdeep Kumar (Complainant) Adv. Harshit Batra (Respondent)

**CORAM:**

Shri Arun Kumar  
Shri Vijay Kumar Goyal  
Shri Ashok Sangwan

**Chairman**  
**Member**  
**Member**

**ORDER**

1. This order shall dispose of all the complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely,

"Gurgaon Greens", Situated in Sector- 102, Gurugram, Haryana, being developed by the respondent/promoter i.e., M/s Emaar MGF Land Limited. The terms and conditions of the allotment letter, buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question thus seeking award for delayed possession charges and others.

3. The details of the complaints, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

<b>Project Name and Location</b>	"Gurgaon Greens", Sector- 102, Gurugram, Haryana.
<b>Project area</b>	13.531 acres
<b>Nature of the project</b>	Group housing colony
<b>DTCP license no.</b>	75 of 2012 dated 31.07.2012 Valid/renewed up to 30.07.2020
<b>Name of licensee</b>	Kamdhenu Projects Pvt. Ltd. and another C/o Emaar MGF Land Ltd.
<b>HRERA registered/ not registered</b>	Registered vide no. 36(a) of 2017 dated 05.12.2017 for 95829.92 sq. mtrs.
<b>HRERA registration valid up to</b>	31.12.2018
<b>HRERA extension of registration vide</b>	01 of 2019 dated 02.08.2019
<b>Extension valid up to</b>	31.12.2019
<b>Date of start of construction</b>	14.06.2013
<b>Occupation certificate</b>	30.05.2019
<b>Possession clause as per buyer's agreement</b>	<p><b>14. POSSESSION</b>  <b>(a) Time of handing over the Possession</b>  <i>Subject to terms of this clause and barring force majeure conditions, 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</i></p>

*hand over the possession of the Unit within 36 (Thirty Six) months from the date of start of construction; subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the Company shall be entitled to a grace period of 5 (five) for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project."*

(Emphasis supplied)

S. No.	Complaint no., Case title, Date of filing of complaint and reply status	Unit no. and size	Allotment Letter And BBA	Due date of possession	Total sale consideration and Total amount paid by the complainant in Rs.	Date of offer of possession and unit handover letter	Conveyance Deed executed on
1.	CR/6507/2022  Mrs. Sunanda Shivpuri V/S M/s Emaar MGF Land Limited.  <b>DOF:</b> 03.10.2022  <b>RR:</b> 18.07.2023	GGN-11-0702, 7 <sup>th</sup> floor, building no. 11  Area measuring 1650 sq. ft. (super area).  [annexure R2, page 49 of reply]	<b>AL:-</b> 25.01.2013  [annexure R1, page 36-44 of reply]  <b>BBA</b> 06.05.2013  [annexure R2, page 45 of reply]	14.11.2016  [Note:- The due date of possession can be calculated from the date of start of construction i.e., 14.06.2013 including Grace period of 5 months]	<b>TC:</b>  95,79,830/-  [As per statement of account dated 21.06.2019 at page no. 77 of complaint]  <b>AP:</b>  89,19,755/-  [As per annexure R-9, at page no. 179 of reply]	<b>OOP</b>  31.05.2019  [Page no. 124 to 128 of the reply]  <b>UHL</b>  13.07.2019  [Page no. 132 of the reply]	01.08.2019  [Page no. 133 to 178 of the reply]
2.	CR/1871/2023  Mr. Abhishek Mohal & Mrs. Deepika Bansal	GGN-12-0202, 2nd floor,	<b>AL:-</b> 25.01.2013  [page 21 of complaint]	14.11.2016  [Note:- The due date of	<b>TC:</b>  1,21,27,760/-  [As per statement of	<b>OOP</b>  01.06.2019  [Page no. 90 of the complaint]	04.01.2023  [Page no. 155 of the reply]

V/S M/s Emaar MGF Land Limited  DOF: 21.04.2023  RR: 26.09.2023	building no. 12  Area ad- measu- ring 1650 sq. ft.  [page 37 of compla- int]	<b>BBA</b> 14.06.2013 [page 34 of complaint]	possession can be calculated from the date of start of constructio n i.e., 14.06.2013 including Grace period of 5 months]	account dated 13.04.2023 at page no. 87 of complaint]  <b>AP:</b> <b>1,24,81,147/-</b>  [As per annexure R-9, at page no. 205 of reply]	<b>UHL</b> 16.12.2021 [Page no. 96 of the complaint]
--	--	---	---	--	---

**Relief sought by the complainant:-**

- Direct the respondent to pay interest at the rate of 18% on account of delay in offering possession on Rs.95,87,930/- paid by the complainant as sale consideration of the said flat from the date of payment till the date of delivery of possession;
- Direct the respondent to return Rs.1,12,576/-, amount unreasonably charged by respondent by increasing sale price after execution of buyer's agreement between respondent and complainants.
- Direct the respondent to return entire amount paid as GST tax by complainant between 01.07.2017 to 24.07.2019.
- Direct the complainant's bank to remove the lien marked over fixed deposit of Rs.2,43,760/- in favour of respondent on the pretext of future payment of HVAT for the period of (01.04.2014 to 30.06.2017) and also order to direct respondent to assist the process of removing lien from complainant's bank by providing NOC for the same.
- Direct the respondent to pay an amount of Rs.55,000/- to the complainants as cost of the present litigation.

**Note:** In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing of complaint
RR	Reply received by the respondent
TC	Total consideration
AP	Amount paid by the allottee/s
BBA	Builder Buyer's Agreement
AL	Allotment Letter
OOP	Offer of possession
UHL	Unit Handover Letter

- The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/6507/2022 titled as Mrs. Sunanda Shivpuri V/s M/s Emaar MGF Land Limited** are being taken into consideration for determining the rights of the allottee(s).

**A. Project and unit related details**

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

**CR/6507/2022 titled as Mrs. Sunanda Shivpuri V/s M/s Emaar MGF Land Limited.**

Sr. No.	Particulars	Details
1.	Name of the project	Gurgaon Greens, Sector 102, Gurugram, Haryana
2.	Project area	13.531 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	75 of 2012 dated 31.07.2012 Valid/renewed up to 30.07.2020
5.	Name of licensee	Kamdhenu Projects Pvt. Ltd. and another C/o Emaar MGF Land Ltd.
6.	HRERA registered/ not registered	Registered vide no. 36(a) of 2017 dated 05.12.2017 for 95829.92 sq. mtrs.
	HRERA registration valid up to	31.12.2018
	HRERA extension of registration vide	01 of 2019 dated 02.08.2019
	Extension valid up to	31.12.2019
7.	Unit no.	GGN-11-0702, 7 <sup>th</sup> floor, building no. 11 [annexure P1, page 27 of complaint]
8.	Provisional allotment letter dated	25.01.2013 [annexure R1, page 36-44 of reply]
9.	Date of execution of buyer's agreement	06.05.2013 [annexure R2, page 45 of reply]
10.	Possession clause	<b>14. POSSESSION</b> <b>(a) Time of handing over the possession</b> <i>Subject to terms of this clause and barring force majeure conditions, 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 Unit within 36 (Thirty Six) months from the date of start of construction; subject to timely compliance of the provisions of the</i>

		<i>Agreement by the Allottee. The Allottee agrees and understands that the Company shall be entitled to a grace period of 5 (five) for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project.</i> (Emphasis supplied)
11.	Date of start of construction	14.06.2013 [page 77 of the complaint]
12.	Due date of possession	14.11.2016 [Note:- including Grace period of 5 months]
13.	Total consideration as per statement of account dated 21.06.2019 at page 77 of complaint	Rs.95,79,830/-
14.	Total amount paid by the complainants per statement of account dated 21.06.2019 at page 77 of complaint	Rs.89,19,755/-
15.	Occupation certificate	30.05.2019 [annexure R4, page 121-123 of reply]
16.	Offer of possession	31.05.2019 [annexure R5, page 124-128 of reply]
17.	Unit handover letter dated	13.07.2019 [annexure R7, page 132 of reply]
18.	Conveyance deed executed on	01.08.2019 [annexure R8, page 133-178 of reply]

#### B. Facts of the complaint

6. The complainant has made the following submissions in the complaint: -

- I. That somewhere in the month of January 2012, the respondent through its business development associate approached the complainant with an offer to invest and buy a flat in the proposed project of respondent, which the respondent was going to launch the project namely "Gurgaon Greens" in the Sector-102, Gurugram. On 08.02.2012 complainant had a meeting with respondent at the respondents branch office "Emaar Business Park, MG Road, Sikanderpur Chowk, Sector 28, Gurugram 122002" where the

respondent explain the project details of "Gurgaon Greens" and highlight the amenities of the project like Joggers Park, Joggers Track, Rose garden, 2 swimming pool, amphitheater and many more and told that tower 03, 07, 11, and 12 is only available for advance booking and each tower will have G+13<sup>th</sup> floors and on every 13<sup>th</sup> floor of these towers there will be a penthouse which possessing floor no 13<sup>th</sup> and 14<sup>th</sup> floor, on relying on these details complainant enquire the availability of flat on 7<sup>th</sup> floor in Tower 11 which was a unit consisting area 1650 sq. ft. Respondent represented to the complainant that the respondent is a very ethical business house in the field of construction of residential and commercial project and in case the complainant would invest in the project of respondent then they would deliver the possession of proposed flat on the assured delivery date as per the best quality assured by the respondent. The respondent had further assured to the complainant that the respondent has already processed the file for all the necessary sanctions and approvals from the appropriate and concerned authorities for the development and completion of said project on time with the promised quality and specification. The respondent had also shown the brochures and advertisement material of the said project to the complainant given by the respondent and assured that the allotment letter and builder buyer agreement for the said project would be issued to the complainant within one week of booking to made by the complainant. The complainant while relying upon those assurances and believing them to be true, complainant booked a residential flat bearing No. 0702 on 7<sup>th</sup> floor in Tower - 11 in the proposed project of the respondent measuring approximately super area of 1650 sq. ft. (153.29 sq. meter) in the township to be developed by it. Accordingly, the complainant have paid Rs.7,50,000/-

through cheque bearing no. 198994 dated 08.02.2012 as booking amount on 08.02.2012.

- II. That in the said application form, the price of the said flat was agreed at the rate of Rs.4,507/- per sq. ft. mentioned in the said application form. At the time of execution of the said application form, it was agreed and promised by the respondent that there shall be no change, amendment or variation in the area or sale price of the said flat from the area or the price committed by the respondent in the said application form or agreed otherwise.
- III. That approximately after one year on 05.02.2013 the respondent issued a buyers agreement for signing, which consisted very stringent and biased contractual terms which are illegal, arbitrary, unilateral and discriminatory in nature, because every clause of agreement is drafted in a one-sided way and a single breach of unilateral terms of buyers agreement by complainant, will cost him forfeiting of 15% of total consideration value of unit. Respondent exorbitantly increased the net consideration value of flat by adding EDC, IDC and PLC and when complainant opposed the unfair trade practices of respondent they inform that EDC, IDC and PLC are just the government levies and they are as per the standard rules of government and these are just approximate values which may come less at the end of project and same can be proportionately adjusted on prorata basis and about the delay payment charges of 24% they said this is standard rule of company and company will also compensate at the rate of Rs.7.5/- per sq. ft. per month in case of delay in possession of flat by company. Complainant opposed these illegal, arbitrary, unilateral and discriminatory terms of buyer's agreement but as there is no other option left with complainant because if complainant stop the further payment of installments then in that



case respondent forfeit 15% of total consideration value from the total amount paid by complainant. On 05.02.2013, the builder buyer agreement was executed on similar illegal, arbitrary, unilateral and discriminatory terms narrated by respondent. That as per the clause 14 of the said flat buyer's agreement dated 05.02.2013, the respondent had agreed and promise to complete the construction of the said flat and deliver its possession within a period of 36 months with a Five (5) months grace period thereon from the date of start of construction. However the respondent has breached the terms of said flat buyer agreement and failed to fulfill its obligations and has not delivered possession of said flat within the agreed time frame of the builder buyer agreement. The proposed possession date as per buyer's agreement was due on 14.06.2016.

- IV. That from the date of booking 08.02.2012 and till 01.06.2019, the respondent had raised various demands for the payment of installments on complainant towards the sale consideration of said flat and the complainant have duly paid and satisfied all those demands as per the flat buyers agreement without any default or delay on their part and have also fulfilled otherwise also their part of obligations as agreed in the flat buyers agreement. The complainant were and have always been ready and willing to fulfill their part of agreement, if any pending.
- V. That as per annexure III (Schedule of Payment) of buyer's agreement the sales consideration for said flat was Rs.89,34,983/- (which includes the charges towards basic price - Rs.74,36,583/-, Govt. Charges (EDC & IDC) of Rs.5,70,900/-, Club Membership charges Rs.50,000/-, IFMS Rs.82,500/-, Car Parking charges Rs.3,00,000/-, and PLC for Central Green Rs.4,95,000/-) exclusive of service tax and GST, but later at the time of possession, the

respondent add Rs.30,076/- in the sale consideration and increase sale consideration to Rs.89,65,059/- without any reason for the same and respondent also charge IFMS Rs.82,500/- separately, whereas IFMS charges already included in sale consideration and that way respondent charge IFMS twice from residents. Respondent increased the sale consideration by Rs.1,12,576/- (Rs.30,076/- + Rs.82,500/-) without any reason, which is an illegal, arbitrary, unilateral and unfair trade practice. Complainant opposed the increase in sales consideration at time of possession but respondent did not pay any attention to complainant.

- VI. That the complainant has paid the entire sale consideration along with applicable taxes to the respondent for the said flat. As per the statement dated 21.06.2019, issued by the respondent, upon the request of the complainant, the complainant have already paid Rs.95,87,930/- towards total sale consideration and applicable taxes as on today to the respondent as demanded time to time and now nothing is pending to be paid on the part of complainant. Although the respondent charges Rs.1,12,576/ extra from complainant.
- VII. That on the date agreed for the delivery of possession of said unit as per date of booking and later on according to the flat buyers agreement is 14.06.2016, the complainant had approached the respondent and its officers for inquiring the status of delivery of possession but none had bothered to provide any satisfactory answer to the complainant about the completion and delivery said flat. The complainant thereafter kept running from pillar to post asking for the delivery of his home but could not succeed in getting any reliable answer.



- VIII. That the conduct on part of respondent regarding delay in delivery of possession of the said flat has clearly manifested that respondent never ever had any intention to deliver the said flat on time as agreed. It has also cleared the air on the fact that all the promises made by the respondent at the time of sale of involved flat were fake and false. The respondent had made all those false, fake, wrongful and fraudulent promises just to induce the complainant to buy the said flat on basis of its false and frivolous promises, which the respondent never intended to fulfill. The respondent in its advertisements had represented falsely regarding the delivery date of possession and resorted to all kind of unfair trade practices while transacting with the complainant.
- IX. That the offer of possession offered by respondent through "Intimation of Possession" was not a valid offer of possession because respondent offered the possession on dated 01.06.2019 with stringent condition to pay certain amounts which are never be a part of agreement. As 01.06.2019 project was delayed approx. 3 years. At the time of offer of possession builder did not adjusted the penalty for delay possession as per the Act 2016. In case of delay payment, builder charged the penalty @ 24% per annum and in case of delay in possession builder promised to give Rs.7.5/- sq. ft. only, which is illegal, arbitrary, unilateral and discriminatory. Respondent also demanded an Indemnity-cum-undertaking along with final payment, which is illegal and unilateral demand. Respondent did not even allow complainants to visit the property at "Gurgaon Greens" before clearing the final demand raised by respondent along with the offer of possession. Respondent demanded two year advance maintenance charges from complainants which was never agreed under the buyer's agreement and respondent also demanded



a lien marked FD of Rs.2,43,760/- on the pretext of future liability against HVAT for the period of (01-April-2014 to 30-June-2017) which is also a unfair trade practice. Complainant informed the respondent about his unfair calculation of delay possession penalty and also enquires the construction status of rest of project through telephonically but nothing changed and respondent does not want answer any enquiry before getting complete payment against his final demand. Respondent left no other option to complainant, but to pay the payment two year maintenance charges Rs.1,44,540/- and submit a fixed deposit of Rs.2,43,760/- with a lien marked in favour of Emaar MGF Land Limited and Rs.2,46,962/- towards E-Stamp duty and Rs.45,000/- towards registration charges of above said unit no. 0702, Tower 11, Gurgaon Greens in addition to final demand raised by respondent along with the offer of possession. respondent scheduled physical inspection cum handover of aforesaid property on date 13.07.2019, complainant specially come from Australia to obtain the physical possession of unit on 13.07.2019 even though the unit was not ready and there are several deficiency in respect of various small works pending in unit.

- X. That the respondent did not provide the final measurement of above said unit no. 0702, tower no. 11, "Gurgaon Greens". Respondent charge all IDC, EDC and PLC and maintenance as per area of unit as 1650 sq. ft. but there is no architect confirmation provided by Respondent about the final unit area which respondent was going to handover to complainant.
- XI. That the GST Tax which has come into force on 01.07.2017, it is a fresh tax. The possession of the apartment was supposed to be delivered to complainant on 14.06.2016, therefore, the tax which has come into

existence after the due date of possession of flat, this extra cost should not be levied on complainant, since the same would not have fallen on the complainant if respondent had offer the possession of flat within the time stipulated in the builder buyer agreement.

- XII. That on 13.07.2019, the complainant inform respondent telephonically that respondent is creating anomaly by not compensating the complainant for delay possession charges at the rate of interest specified in Act of 2016. Complainant makes it clear to respondent that, if respondent not compensates the complainant for delay possession interest then complainant will approach the appropriate forum to get redressal. Whenever complainant enquire about the delay possession charges, respondent making excuse of getting approval from directors, but till date respondent did not credited the delay possession interest.
- XIII. That the respondent has committed grave deficiency in services by delaying the delivery of possession and false promises made at the time of sale of the said flat which amounts to unfair trade practice which is unfair as well as illegal. The respondent has also criminally misappropriated the money paid by the complainant as sale consideration of said flat by not delivering the unit on agreed timelines. The respondent has also acted fraudulently and arbitrarily by inducing the complainant to buy the said flat basis its false and frivolous promises and representations about the delivery timelines aforesaid housing project.
- XIV. That after taking possession of flat on 13.07.2019, the complainant return to Australia and didn't able to visit India again due to worldwide pandemic situation Covid -19, Now after the lifting of travel ban by appropriate authorities complainant's husband return to India on to oversee unit and to

pursue the delay possession charges with respondent, but respondent did not paying any heed to the request of complainant to pay the lawful delay possession charges as per the Act of 2016, due to above reason complainant had perforce filed this complaint against the respondent before this Authority.

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

7. The complainant has sought following relief(s):
  - I. Direct the respondent to pay interest at the rate of 18% on account of delay in offering possession on Rs.95,87,930/- paid by the complainant as sale consideration of the said flat from the date of payment till the date of delivery of possession;
  - II. Direct the respondent to return Rs.1,12,576/-, amount unreasonably charged by respondent by increasing sale price after execution of buyer's agreement between respondent and complainants.
  - III. Direct the respondent to return entire amount paid as GST tax by complainant between 01.07.2017 to 24.07.2019.
  - IV. Direct the complainant's bank to remove the lien marked over fixed deposit of Rs.2,43,760/- in favour of respondent on the pretext of future payment of HVAT for the period of (01.04.2014 to 30.06.2017) and also order to direct respondent to assist the process of removing lien from complainant's bank by providing NOC for the same.
  - V. Direct the respondent to pay an amount of Rs.55,000/- to the complainants as cost of the present litigation.
8. 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**

9. The respondent has contested the complaint on the following grounds:-
- I. That at the very outset, it is submitted that the instant complaint is untenable both in facts and in law and is liable to be rejected on this ground alone. That the complainant is estopped by her acts, conduct, acquiescence, laches, omissions, etc. from filing the present complaint.
  - II. That the complainant have got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 06.05.2013 as shall be evident from the submissions made in the following paragraphs of the present reply.
  - III. That the present complaint is not maintainable in law or on facts. The present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint are beyond the purview of this Authority and can only be adjudicated by the Civil Court. Therefore, the present complaint deserves to be dismissed on this ground alone.
  - IV. That the complainant has not come before this Authority with clean hands and has suppressed vital and material facts from this Authority. The correct facts are set out in the succeeding paras of the present reply. That the complainant is vehemently and most humbly stated that bring out the true and correct facts and circumstances is subject to the contention of the respondent that the Authority has no jurisdiction to deal with the present

matter and that the present complaint is not maintainable for reasons stated in the present reply.

- V. That the complainant is not an "Allottee" but an Investor who has booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale. The apartment in question has been booked by the complainant as a speculative investment and not for the purpose of self-use as her residence. Therefore, no equity lies in favor of the complainant.
- VI. That the complainant approached the respondent and expressed interest in booking of an apartment in the residential group housing colony developed by respondent known as "Gurgaon Greens" situated in Sector 102, Gurgaon, Haryana. Prior to the booking, the complainant conducted extensive and independent enquiries with regard to the project, only after being fully satisfied on all aspects, she took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question.
- VII. That thereafter, the complainant, vide an application form dated 25.01.2012 applied to the respondent for provisional allotment of the unit. Pursuant thereto, unit bearing no GGN-11-0702, located on the 7th floor, in tower-11 admeasuring 1650 sq. ft. (tentative area) was allotted vide provisional allotment letter dated 25.01.2013. The complainant consciously and willfully opted for a construction linked payment plan for remittance of sale consideration for the unit in question and further represented to the respondent that she shall remit every installment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainant and proceeded to allot the unit in



question in her favor. Thereafter, a buyer's agreement dated 06.05.2013 was executed between the complainant and the respondent. It is pertinent to mention that the buyer's agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on the parties.

- VIII. That as per clause 14(a) of the buyer's agreement, the delivery of possession of the unit was proposed to be within 36 months from the date of start of construction (14.06.2013) and a grace period of 5 months, i.e., 14.11.2013. That the delivery of possession of the unit was further "Subject to terms of this clause and barring force majeure conditions, and subject to the Allottee having timely complied with all the terms and conditions of this Agreement and not being in default under any provisions of this Agreement and compliance with all provisions, formalities, documentation etc..."
- IX. That being a contractual relationship, reciprocal promises are bound to be maintained. That it is respectfully submitted that the rights and obligations of allottee as well as the builder are completely and entirely determined by the covenants incorporated in the agreement which continues to be binding upon the parties thereto with full force and effect.
- X. That the remittance of all amounts due and payable by the complainant under the agreement as per the schedule of payment incorporated in the agreement was of the essence. It has also been provided therein that the date for delivery of possession of the unit would stand extended in the event of the occurrence of the facts/reasons beyond the power and control of the respondent. It was categorically provided in clause 14(b)(vi) that in case of any default/delay by the allottees in payment as per the schedule

of payment incorporated in the agreement, the date of handing over of possession shall be extended accordingly, solely on the respondent's discretion till the payment of all outstanding amounts to the satisfaction of the respondent. Since the complainant has defaulted in timely remittance of payments as per the schedule of payment the date of delivery of possession is not liable to be determined in the manner sought to be done by the complainant.

- XI. That the complainant had defaulted/delayed in making the due payments, upon which, reminders were also served to the complainant and had paid delayed payment interest at multiple occasions. That the bonafide of the respondent is also essential to be highlighted at this instance, who had served a number of request letters and demand notes to the complainant to ensure that the payments are made in a timely fashion.
- XII. Despite there being a number of defaulters in the project, the Respondent had to infuse funds into the project and have diligently developed the project in question. That it must be noted by the Authority that despite the default caused, the respondent applied for occupation certificate in respect of the said unit on 31.12.2018 and the same was thereafter issued vide memo bearing no. ZP-835/AD(RA)2018/13010 dated 30.05.2019. Once an application for grant of occupation certificate is submitted for approval in the office of the concerned statutory authority, respondent ceases to have any control over the same. The grant of sanction of the occupation certificate is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence. As far as the respondent is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authority for obtaining of the occupation

certificate. No fault or lapse can be attributed to the respondent in the facts and circumstances of the case. Therefore, the time period 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.

- XIII. That thereafter, the complainant was offered possession of the unit in question through letter of offer of possession dated 31.05.2019. The complainant was called upon to remit balance payment including delayed payment charges and to complete the necessary formalities /documentation necessary for handover of the unit in question to the complainant. It is submitted that the complainant delayed the procedure of taking the possession of the said unit on her own account.
- XIV. That without prejudice to the contentions of the respondent, it is submitted that the allegations of the complainant that possession was to be delivered by June, 2016 are wrong, malafide, and result of an afterthought in view of the fact that the complainant had made several payments to respondent even after June, 2016. In fact, the last payment was received from the complainant on 31.05.2019, had there been any delay in the delivery of the project as alleged by the complainant, then the complainant would not have remitted instalments after June, 2016. The allegations put forth by the complainant qua the respondent are absolutely illogical, irrational, and irreconcilable in the facts and circumstances of the case.
- XV. That moreover, without accepting the contents of the complaint in any manner whatsoever, and without prejudice to the rights of the respondent, the respondent has credited an amount of Rs.3,77,963/- as compensation

due to alleged delay and an amount of Rs.55,672/- towards anti-profiting. That the respondent has always adhered to the terms and conditions of the buyer's agreement. The allegations put forth by the complainant qua the respondent are absolutely illogical, irrational, and irreconcilable in the facts and circumstances of the case.

- XVI. That the respondent earnestly requested the complainant to obtain possession of the unit in question and further requested the complainant to execute a conveyance deed in respect of the unit in question after completing all the formalities regarding the delivery of possession. However, the complainant did not pay any heed to the legitimate, just, and fair request of the respondent and threatened the respondent with the institution of unwarranted litigation. That thereafter, an indemnity cum undertaking for possession dated 19.06.2019 of the said unit was executed between the complainant and the respondent for use and occupation of the said unit whereby the complainant have declared and acknowledged that she has no ownership right, title, or interest in any other part of the project except in the unit area of the unit in question. The instant complaint is preferred in complete contravention of their earlier representations and documents executed. The present frivolous complaint has been filed with the mala fide intention to mount undue pressure upon respondent thereby compelling it to succumb to their unjust and illegitimate demands.
- XVII. That a complainant finally took possession of the unit on 13.07.2019 and consequently, the conveyance deed was executed on 01.08.2019. It was specifically and expressly agreed that the liabilities and obligations of the respondent as enumerated in the allotment letter or the buyer's agreement stand satisfied. The complainant has intentionally distorted the real and

true facts in order to generate an impression that the respondent has reneged from its commitments. No cause of action has arisen or subsists in favor of the complainant to institute or prosecute the instant complaint. The complainant has preferred the instant complaint on absolutely false and extraneous grounds in order to needlessly victimize and harass the respondent.

- XVIII. That the present claim is barred by limitation. The Article 113 of Schedule I of the Limitation Act is applicable and the present complaint was filed after 1208 days (3 years 3 months 20 days) of execution of conveyance deed, which cannot be condoned under any circumstance whatsoever. This Authority in CR/2031/2022 Case titled as Madan Lal Khurana and Sudha Khurana Vs Emaar MGF Land limited dismissed a case vide order dated 08.09.2022 where the allottee approached the Authority years after the conveyance deed had been executed. This Authority disposed the matter noting it to be barred by limitation.
- XIX. That without prejudice to the above stated true facts and law and the contention of the respondent that the present case needs to be dismissed at the outset, it is also submitted that no extra charges have been taken from the complainant. The respondent has been charged as per the terms and conditions of the agreement only. It is most vehemently denied that the sum of Rs.1,12,576/- was taken extra or was charged twice, as alleged by the complainant without any valid justification. That an amount of Rs.1,12,576/- that has been charged from the complainant in lieu of other charges which includes electrification charges, water connection charges, sewerage connection charges, electric meter charges, storm water

connection charges, piped Gas connection charges etc., registration charges and administrative charges.

XX. That moreover, without accepting the contents of the complaint in any manner whatsoever, and without prejudice to the rights of the respondent, delayed interest if any has to be calculated only on the amounts deposited by the allottees/complainant 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/complainant towards delayed payment charges (DPC) or any taxes/statutory payments, etc. That in light of the bona fide conduct of the respondent, no delay for the complainant, the peaceful possession having been taken by the complainant, non-existence of cause of action, claim being barred by limitation and the frivolous complaint filed by the complainant, this complaint is bound to be dismissed with costs in favor of the respondent.

XXI. All other averments made in the complaints were denied in toto.

10. 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.
11. The complainant has filed the written submissions on 02.12.2024, which is taken on record and has been considered by the authority while adjudicating upon the relief sought by the complainant.

**E. Jurisdiction of the authority**

12. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I Territorial jurisdiction**

13. 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**

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

**Section 11**

.....

(4) The promoter shall-

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

**Section 34-Functions of the Authority:**

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

15. 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. Objections raised by the respondent.**

**F.I Objection regarding maintainability of complaint on account of complainant being investor.**

16. 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 allotment letter, it is revealed that the complainants are buyer's, and have paid a total price of Rs.89,19,755/- 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;"*

17. 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 complainant, it is crystal clear that the complainant are allottee(s) 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 are not entitled to protection of this Act also stands rejected.

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

**G.I Direct the respondent to pay interest at the rate of 18% on account of delay in offering possession on Rs.95,87,930/- paid by the complainant as sale consideration of the said flat from the date of payment till the date of delivery of possession;**



18. The complainant 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."*

19. As per clause 14 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

**Clause 14**

**(a) Time of handing over of possession**

*Subject to terms of this clause and barring force majeure conditions, 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 Unit within 36 (Thirty Six) months from the date of start of construction; subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the Company shall be entitled to a grace period of 5 (five) for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project."*

20. At the outset, it is relevant to comment on the present possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by him in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of

allottees and the commitment time period for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottees is left with no option but to sign on the dotted lines.

21. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the unit within 36 months from the date of start of construction. Further, it was provided in the buyer's agreement that company shall be entitled to a grace period of five months, for applying and obtaining the completion certificate/ occupation certificate in respect of the unit and/or the project.
22. The Authority put reliance on the judgement of 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 para is reproduced below:

*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. Thus the due date of handing over of possession comes out to be 14.11.2016.

24. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the prescribed rate of interest on the amount already paid by him. 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., 10.12.2024 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 allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default.
28. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
29. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the Authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 14(a) of the agreement, the possession of the subject apartment was to be delivered within a period of 36 months from the date of start of construction and it is further provided in agreement that promoter shall be entitled to a grace period of five months for applying and obtaining completion certificate /occupation certificate in respect of said floor. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to 14.11.2016. In the present case, the complainant was offered possession by the respondent on 31.05.2019 after obtaining occupation certificate dated 30.05.2019 from the competent authority. The authority is of the considered view that there is delay on the part of the

respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement executed between the parties.

30. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 30.05.2019. However, the respondent offered the possession of the unit in question to the complainant only on 31.05.2019, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, he should be given 2 months' time from the date of offer of possession. These 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 14.11.2016 till the expiry of 2 months from the date of offer of possession (30.05.2019) which comes out to be 30.07.2019.
31. In proceeding dated 10.12.2024, the counsel for the respondent raised an objection that the delayed possession charge may be allowed only on the amount paid by the complainant herself. Further, he stated that the benefits given by the respondent company to the complainant/allottee for credit memo (credit on account of - anti-profiting, compensation credited on IOP, early payment rebate credited to customer etc.) may not be considered for payment of delayed possession charges. On the other hand the counsel for the complainant stated that

the deductions are in lieu of advance payment or statutory benefits may be considered as part of the payment made by the complainant.

32. In complaint bearing number 6507 of 2022, the counsel for the respondent contended that as per the statement of account dated 21.06.2019, (annexure-P/2 at page no. 77 and 78 of the complaint) the respondent company has given the credit memo/benefits an amount of Rs.55,672/-, Rs.3,77,963/- and Rs.1,794/- respectively (credit on account of - anti-profiting, compensation credited on IOP and EPR credited to customer) and the complainant has only paid an amount of Rs.89,19,755.72/- instead of Rs.95,79,831/- and the differential amount is actually Early Payment Rebate (EPR) and benefits including compensation credited in the account. The amounts under the said heads, have not been paid by the allottee may not be considered in the amount paid/decretal amount.
33. In complaint bearing number 1871 of 2023, the counsel for the respondent contended that as per the statement of account dated 13.04.2023, (annexure-P/3 at page no. 87 and 88 of the complaint) the respondent company has given the credit memo/benefits an amount of Rs.43,818/-, Rs.1,88,982/- and Rs.3,00,000/- respectively (credit on account of - anti-profiting, DPC received and NCR approved compensation) and the complainant has only paid an amount of Rs.1,24,81,147/- instead of Rs.1,21,27,821/- and the differential amount is actually Early Payment Rebate (EPR) and benefits including compensation credited in the account. The amounts under the said heads, have not been paid by the allottee may not be considered in the amount paid/decretal amount.
34. After hearing the contentions made by the parties and considering the facts of the case, the Authority is of the view that an allottee becomes entitled to delayed payment interest only on the amount actually paid by the allottee as the allottee has suffered pecuniary loss only on this amount. The Authority further relies on

the Judgement dated 15.03.2022, passed by the Hon'ble Haryana Real Estate Appellate Tribunal, Chandigarh in appeal bearing no. **234 of 2021 titled as Emaar MGF Land Ltd. Versus Anubhav Gupta**, and the relevant portion is reproduced for ready reference:-

43. *The delayed possession interest is not payable on compensation already credited in the account of the respondent-allottee. This plea of the appellant is correct and logical. Therefore, in view of the aforesaid discussions, it is held that the appellant is liable to pay the interest as delayed possession charges on the amount i.e. (Rs.1,15,02,318/- minus Rs.6,23,447/- = Rs.1,08,78,871/-) from 01.03.2016 till the handing over of the possession.*
45. *Thus, keeping in view our aforesaid discussion, the appeal filed by the appellant is partly allowed as per the above said observations and the impugned order of Authority is modified to the extent that the appellant shall pay the delayed possession interest @ 9.3% per annum on the amount of Rs.1,08,78,871/- from the due date of possession i.e. 01.03.2016 till handing over of the possession. The interest on the amount, if any, which has been paid after due date of possession i.e. 01.03.2016 shall be payable from the date on which the amount has been paid till the handing over possession.*

35. In light of the above Hon'ble Tribunal the Authority is of the view that the allottee is liable for delayed possession charges on the amount actually paid by the complainant and not the compensation/rebate given by the respondent company.

36. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at prescribed rate of the interest @ 11.10% p.a. w.e.f. 14.11.2016 till 30.07.2019 as per provisions of section 18(1) of the Act read with rule 15 of the rules on the amount paid by the complainant.

- G.II Direct the respondent to return Rs.1,12,576/-, amount unreasonably charged by respondent by increasing sale price after execution of buyer's agreement between respondent and complainants.**
- G.III Direct the respondent to return entire amount paid as GST tax by complainant between 01.07.2017 to 24.07.2019.**
- G.IV Direct the complainant's bank to remove the lien marked over fixed deposit of Rs.2,43,760/- in favour of respondent on the pretext of future payment of**

**HVAT for the period of (01.04.2014 to 30.06.2017) and also order to direct respondent to assist the process of removing lien from complainant's bank by providing NOC for the same.**

**G.V Direct the respondent to pay an amount of Rs.55,000/- to the complainants as cost of the present litigation.**

37. The above-mentioned relief sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
38. In the above mentioned relief sought by the complainants the Authority observes that the financial liabilities between the allottee and the promoter come to an end after the execution of the conveyance deed accept for the statutory rights under the Act of 2016. The complainants could have asked for the claim before the conveyance deed got executed between the parties.
39. Moreover, the clause 13 of the conveyance deed dated 01.08.2019 is also relevant and reproduced hereunder for ready reference:

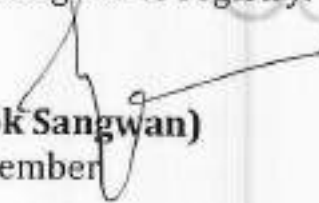
*13. That the actual, physical, vacant possession of the said Apartment has been handed over to the Vendee and the Vendee hereby confirms taking over possession of the said Apartment / parking space(s) from the Vendors after satisfying himself / herself that the construction as also the various installations like electrification work, sanitary fittings, water and sewerage connection etc. have been made and provided in accordance with the drawings, designs and specifications as agreed and are in good order and condition and 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.*

40. Therefore, after execution of the conveyance deed the complainant-allottee cannot seek any refund of charges other than statutory benefits if any pending. Once the conveyance deed is executed and accounts have been settled, no claims remains. So, no directions in this regard can be effectuated at this stage.

#### **H. Directions of the authority**



41. 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):
- The respondent/promoter is directed to pay interest at the prescribed rate i.e., 11.10% per annum for every month of delay on the amount paid by the complainant(s) from the due date of possession till the date of offer of possession plus two months or the date of handing over whichever is earlier as per proviso to section 18(1) of the Act read with rule 15 of the rules. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.
  - Also, the amount of compensation already paid by the respondent towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.
  - The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.
42. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order wherein details of paid up amount is mentioned in each of the complaints.
43. Complaint as well as applications, if any, stands disposed off accordingly.
44. Files be consigned to registry.

  
**(Ashok Sangwan)**  
Member

  
**(Vijay Kumar Goyal)**  
Member

  
**(Arun Kumar)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.12.2024