



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

Date of order: 20.11.2024

NAME OF THE BUILDER		M/s Ramprastha Promoters & Developers Private Limited	
PROJECT NAME		"THE EDGE TOWERS"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/2313/2023	Chhaya Keerti Ratna V/S M/s Ramprastha Promoters & Developers Pvt. Ltd.	Gaurav Rawat Advocate and R Gayathri Manasa Advocate
2.	CR/627/2024	Puneet Sahney and Meenakshi Sahney V/S M/s Ramprastha Promoters & Developers Pvt. Ltd. & BlueBell Proptech Pvt. Ltd.	Daggar Malhotra Advocate and R Gayathri Manasa Advocate for R-1 None for R-2

**CORAM:**

Ashok Sangwan

Member

**ORDER**

1. This order shall dispose of both the complaints titled as above filed before the authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter se between parties.



2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Skyz" (Group Housing Complex) being developed by the same respondent/promoter i.e., M/s Ramprastha Promoters & Developers Private Limited. The terms and conditions of the buyer's agreement against the allotment of units in the project of the respondent/builder and fulcrum of the issues involved in both the cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of handover the physical possession of the allotted unit along with delayed possession charges and others.
3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

<b>Project Name and Location</b>	<b>"Skyz", Sector 37D, Village Gadauli Kalan, Gurugram.</b>
<b>Project area</b>	<b>60.5112 acres</b>
<b>DTCP License No.</b>	<b>33 of 2008 dated 19.02.2008 valid upto 18.02.2025</b>
<b>Name of Licensee</b>	<b>Ramprastha Builders Pvt Ltd and 11 others</b>
<b>RERA Registration</b>	<b>Registered vide no. 320 of 2017 dated 17.10.2017 valid upto 31.12.2023</b>
<b>Occupation Certificate: - Not yet received</b>	



**Possession Clause: -**

**15. POSSESSION**

**(a) Time of handing over the Possession**

*"Subject to terms of this clause and subject to the Allottee having complied with all the terms and condition of this Agreement and the Application, 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 DEVELOPERS, the DEVELOPERS propose to hand over the possession of the Apartment by 31.08.2014 the Allottee agrees and understands that the DEVELOPERS shall be entitled to a grace period of hundred and twenty days (120) days, for applying and obtaining the occupation certificate in respect of the Group Housing Complex."*

Sr. No	Complaint No., Case Title, and Date of filing of complaint	Reply status	Unit No.	Date of execution of apartment buyer's agreement	Due date of possession	Total Consideration / Total Amount paid by the complainants (In Rs.)	Relief Sought
1.	CR/2313/2023  Chhaya Keerti Ratna V/s M/s Ramprastha Promoters & Developers Pvt. Ltd.  Date of Filing of complaint- 23.05.2023	Reply received on 07.02.2024	1704, 17 <sup>th</sup> floor, tower/block- A  (Page no. 31 of the complaint)	09.08.2012  (Page no. 26 of the complaint)	31.12.2014  [As per clause 15(a) of the agreement including Grace period of 4 months]	TSC: - Rs.70,89,670/- (As per schedule of payment at page 57 of the complaint)  AP: - Rs.64,16,151/-  (As per CRA at page no. 22 of the complaint)	1.Possession along with delay possession charges and execution of CD. 2.Not to force the complainants to sign any indemnity cum undertaking. 3.Provide the exact layout plan of the unit. 4. Not to charge monthly maintenance charges for a period of 12



							months or more before actual possession.
2.	CR/627/2024  Puneet Sahney and Meenakshi Sahney V/S M/s Ramprastha Promoters & Developers Pvt. Ltd. & BlueBell Proptech Pvt. Ltd.  Date of Filing of complaint- 16.02.2024	Reply received on 02.07.2024	1702, 17 <sup>th</sup> floor, tower/block- G  (Page no. 45 of the complaint)	27.09.2011  (Page no. 24 of the complaint)	31.12.2014  {{as admitted by the respondent at page 11 of reply, including Grace period of 4 months] (Inadvertently mentioned as 27.09.2014 on proceedings dated 16.10.2024}}	TSC: - Rs.88,92,282/-  (As per schedule of payment at page 45 of the complaint)  AP: - Rs.80,92,595/-  (As per payments receipts at page no. 61-64 of the complaint)	1. Possession along with delay possession charges.

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

**Abbreviation Full form**

TSC- Total Sale consideration

AP- Amount paid by the allottee(s)

- The aforesaid complaints were filed against the promoter on account of violation of the agreement to sell against allotment of units in the upcoming project of the respondent/builder and for not handing over the possession by the due date, seeking award of possession along with delayed possession charges and other.
- It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/



respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The Authority observes that despite due service of notice through speed post as well as through email, no reply has been received from respondent no.2 with regard to the complaint bearing no. **CR/627/2024** and also none has put in appearance on its behalf before the Authority. In view of the above, the respondent no.2 in the said complaint is hereby proceeded ex-parte.

7. The facts of the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/2313/2023 titled as Chhaya Keerti Ratna V/s M/s Ramprastha Promoters & Developers Private Limited** are being taken into consideration for determining the rights of the allottee(s) qua delayed possession charges along with interest and others.

**A. Project and unit related details**

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

**CR/2313/2023 titled as Chhaya Keerti Ratna V/s M/s Ramprastha Promoters & Developers Private Limited**

S. N.	Particulars	Details
1.	Name of the project	"Skyz", Sector 37D, Gurugram
2.	Project area	60.5112 acres
3.	Registered area	102000 sq. mt.
4.	Nature of the project	Group housing complex





5.	DTCP license no. and validity status	33 of 2008 dated 19.02.2008 valid upto 18.02.2025
6.	Name of licensee	Ramprastha Builders Pvt Ltd and 13 others
7.	Date of approval of building plans	12.04.2012 [As per information obtained by planning branch]
8.	Date of environment clearances	21.01.2010 [As per information obtained by planning branch]
9.	RERA Registered/ not registered	Registered vide no. 320 of 2017 dated 17.10.2017 valid upto 31.12.2023
10.	Unit no.	1704, 17 <sup>th</sup> floor, tower/block- A (Page no. 31 of the complaint)
11.	Unit area admeasuring	1725 sq. ft. super area (Page no. 31 of the complaint)
12.	Date of execution of apartment buyer agreement	09.08.2012 (Page no. 26 of the complaint)
13.	Possession clause	<b>15. POSSESSION</b> <b>(a) Time of handing over the Possession</b> Subject to terms of this clause and subject to the Allottee having complied with all the terms and condition of this Agreement and the Application, 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 DEVELOPERS, the DEVELOPERS propose to hand over <i>the possession of the Apartment by 31.08.2014 the Allottee agrees and understands that the DEVELOPERS shall be entitled to a grace period of hundred and twenty days (120) days, for applying and obtaining the</i>



		<b>occupation certificate in respect of the Group Housing Complex. (Emphasis supplied)</b> (Page no. 41 of the complaint)
19.	Due date of possession	31.12.2014 [As mentioned in the buyer's agreement + Grace period of 4 months is allowed to the respondent in view of order dated 08.05.2023 passed by the Hon'ble Appellate Tribunal in <i>Appeal No. 433 of 2022 tilted as Emaar MGF Land Limited Vs Babia Tiwari and Yogesh Tiwari</i> ]
20.	Total sale consideration	Rs.70,89,670/- (As per schedule of payment at page 57 of the complaint)
21.	Amount paid by the complainants	Rs.64,16,151/- (As per CRA at page no. 22 of the complaint)
22.	Occupation certificate /Completion certificate	Not received
23.	Offer of possession	Not offered

**B. Facts of the complaint**

9. The complainant has made the following submissions: -

- I. That the complainant was allotted a unit bearing no. 1704, 17th floor, tower/block- A having super of 1725 sq.ft., in project of the respondent named "Skyz" at Sector 37D, Gurugram vide apartment buyer's agreement dated 09.08.2012 for a total sale consideration of Rs.70,89,670/-.
- II. That as per clause 15(a) of the apartment buyer's agreement, the respondent had to deliver the possession of the apartment by 31.08.2014 + 120 days of grace period for applying and obtaining occupation certificate.



- III. That at the time of execution of the agreement, the complainant had objected towards the highly titled and one-sided clauses of the agreement. However, the respondent turned down the concerns of the complainant and curtly informed that the terms and conditions in the agreement are standard clauses and thus, no change can be made.
- IV. That as per the demands raised by the respondent, based on the payment plan, the complainant has already paid a total sum of Rs.64,16,151/- towards the said unit.
- V. That the complainant went to the office of respondent several times and requested them to allow her to visit the site, but it was never allowed saying that they do not permit any buyer to visit the site during construction period.
- VI. That the complainant contacted the respondent on several occasions, but the respondent was never able to give any satisfactory response to the complainant regarding the status of the construction and was never definite about the delivery of the possession.
- VII. That the respondent has completely failed to honour its promises and has not provided the services as promised and agreed through the brochure, BA and the different advertisements released from time to time.
- VIII. That the complainant is entitled to get delay possession charges with interest at the prescribed rate from date of application/payment to till the realization of money under section 18 & 19(4) of Act. The complainant is also entitled for any other relief which they are found entitled by the Authority.
- IX. That the complainant after losing all the hope from the respondent company, having her dreams shattered of owning an apartment and





also losing considerable amount, is constrained to approach this Authority for redressal of her grievance.

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

10. The complainant has sought following relief(s):

- i. Direct the respondent to handover the possession of the unit and to pay delay possession charges at prescribed rate from the due date of possession till actual handing over of possession.
  - ii. Direct the respondent to not to force the complainants to sign any indemnity cum undertaking as a precondition for signing the conveyance deed.
  - iii. Direct the respondent to provide the exact layout plan of the unit.
  - iv. Direct the respondent to not to charge monthly maintenance charges for a period of 12 months or more before giving actual possession of the unit.
  - v. Direct the respondent to not to charge anything irrelevant which has not been agreed between the parties.
11. 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.**

12. The respondent has contested the complaint on the following grounds.
- i. That the present complaint has been filed by the complainant having complaint no. 2313 of 2023 before this authority inter alia praying for possession of an apartment bearing no. A-1704, 17th floor admeasuring 1725 sq.ft. in project "The Skyz" of the respondent along with delay possession charges.
  - ii. That filing such a complaint after a lapse of such a long time made crystal clear the status of the complainant as an investor who merely



- invested in the present project with an intention to draw back the amount as an escalated and exaggerated amount later.
- iii. That the delay in delivering the possession of the apartment to the complainant has been attributed solely because of reasons beyond the control of the respondent.
  - iv. That clause 15 (a) of the agreement shall not be read in isolation but have to be read in light of other clauses of the agreement. Clause 15(a) of the agreement is subject to clause 31 of the agreement. Clause 15(a) stipulates the time for handing over of the possession which is subject to Force Majeure circumstances which clearly indicate the nature of agreement entered into between the parties, whereby, the stipulated date of delivery is not a strict and final date but merely a tentative date which is further subject to several factors involved.
  - v. That the date of possession shall get extended automatically on account of delay caused due to reasons which are beyond the control of the developers/respondent. Further, the contingency of delay in handing over the apartment within the stipulated time was within the contemplation of the parties at the time of executing the agreement as the parties had agreed vide clause 17(a) that in the eventuality of delay in handing over possession beyond the period stipulated in clause 15(a) of the agreement, the allottee will be compensated with Rs 5/- per sq. ft. per month of super area. This part of compensation was specifically consented to and was never objected at any earlier stage, not while signing the agreement or any time after that.
  - vi. That the delay has occurred only due to unforeseeable and uncontrollable circumstances which despite of best efforts of the respondents hindered the progress of construction, meeting the



agreed construction schedule resulting into unintended delay in timely delivery of possession of the apartment for which the respondent cannot be held accountable. However, the complainant despite having knowledge of happening of such force majeure eventualities and despite agreeing to extension of time in case the delay has occurred as a result of such eventualities has filed this frivolous, tainted and misconceived complaint in order to harass it with a wrongful intention to extract monies.

- vii. That the said terms and conditions of the agreement were executed only after mutual discussion and decision and agreement of both the parties and in such a case, one party cannot withdraw itself from the boundation of the agreement. That once the said agreement was duly signed and accepted by the both the parties which contains detailed terms and conditions the parties are obligated to abide by it and either of parties cannot divert itself from the obligation of performance of their parts manifested in the agreement on it owns whims and fancies and as per their own convenience. It is to be noted that the performance and non -performance of the agreement affects both the parties equally and sometimes one party is at a greater disadvantage when one party abstains from performance of its part.
- viii. That the respondent who is incurring higher expenses due to escalation in the cost of project due to time overrun. The respondents have utilized all the resources towards completion of the project and no monies were diverted by it towards any other project as falsely alleged by him. That the respondent has strived at its best to battle the obstacles so that the delivery of the possession be made as sooner as possible despite of the several unforeseeable hindrances mentioned



herein below posed, since customer satisfaction has always been pivotal and a priority to the respondent. It is pertinent to note here that despite the best efforts by the respondent to hand over timely possession of the said flat booked by the complainant, the respondent could not do so due to reasons and circumstances beyond its control. It was only on account of the following reasons/circumstances that the project got delayed and timely possession could not be handed over to the complainant.

- ix. That the project faced various roadblocks and hindrances including approvals from different authorities which were beyond the control of the respondent and which in turn lead to unforeseeable delay in the construction/completion of the project and hence handing over of the possession of the flat to the complainant.
- x. That in addition to the above, active implementation by the Government of alluring and promising social schemes like National Rural Employment Guarantee Act ("NREGA") and Jawaharlal Nehru National Urban Renewal Mission ("JNNURM"), further led to sudden shortage of labour/ workforce in the real estate market as the available labour were tempted to return to their respective states due to the guaranteed employment under the said NREGA and JNNURM Schemes. The said factor further created a vacuum and shortage of labour force in the NCR region. Large numbers of real estate projects, including the present project of the opposite party herein, were struggling hard to cope with their construction schedules, but all in vain.
- xi. The respondent faced extreme water shortage, which was completely unforeseen by any of the Real Estate Companies, including the



respondent, in the NCR region. The respondent, who was already trying hard to cope up with the shortage of labour, as mentioned above, was now also faced with the acute shortage of water in the NCR region. The said factor of shortage of water directly affected the construction of the project at the site. To make the conditions worse, the Hon'ble High Court of Punjab and Haryana vide Order dated 16.07.2012 restrained the usage of ground water and directed to use only treated water from available Sewerage Treatment Plants (hereinafter referred to as "STP"). As the availability of STP, basic infrastructure and availability of water from STP was very limited in comparison to the requirement of water in the ongoing constructions activities in Gurugram District, it became difficult to timely complete the construction activities as per the schedule. The availability of treated water to be used at construction site was very limited and against the total requirement of water only 10-15% of required quantity was available at construction sites. In furtherance to the directions of Hon'ble High Court of Punjab and Haryana, the Opposite Party received a Letter bearing memo no 2524 dated 01.09.2012 from the Deputy Commissioner, Gurugram, Haryana, informing to it about the complete ban on the use of underground water for construction purposes and use of only recycled water being permitted for the said purposes.

- xii. That the respondent neither had any control over the said directions/orders from the Hon'ble High Court nor had any control over the shortage of water in the NCR region, which in turn led to the delay in the completion and hence the handing over of the possession of the flat to the complainant.





- xiii. That in addition to the above, there has been a heavy shortage of supply of construction material i.e. river sand and bricks etc. through out of Haryana, pursuant to order of Hon'ble Supreme Court of India in the case Deepak Kumar etc. v. State of Haryana (I.A. No. 12-13 of 2011 in SLPs (C) nos. 19628-29 of 2009 with SLPs (C) No. 729-731/2011, 21833/2009, 12498-499/2010, SLP(C) CC... 16157/2011 & CC 18235/2011 dated 27 February 2012) and correspondingly, the construction progress slackened. This also caused a considerable increase in cost of materials. It is noteworthy that while multiple project developers passed on such incremental costs attributable to the above reasons to the buyers, the management of the respondent assured its customers that it will not and has held fast on its promise by not passing on any of such costs to the buyers.
13. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority**

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

**E.I Territorial jurisdiction**

14. 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**

15. 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.

16. 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.

**F. Findings on the objections raised by the respondent**

**F. I Objection regarding the complainant being investor.**

17. The respondent has taken a stand that the complainant is an investor and not consumer. Therefore, she is not entitled to the protection of the Act and is not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate



sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumer of the real estate sector. It is settled principle of interpretation that the preamble is an introduction of a statute and states main aims and objects of enacting a statute but at the same time the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter 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 apartment buyer's agreement, it is revealed that the complainant is a buyer and has paid a considerable amount of money to the promoter towards purchase of an apartment in the project of the promoter. 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;"*

In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment application for allotment, it is crystal clear that the complainant is an allottee as the subject unit was allotted to her by the promoter. The concept of investor is not defined or referred 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". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no.



0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee being investor is not entitled to protection of this Act also stands rejected.

**F.II Objections regarding force majeure.**

18. The respondent/promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as shortage of labour force in the NCR region, ban on the use of underground water for construction purposes, heavy shortage of supply of construction material etc. However, all the pleas advanced in this regard are devoid of merit. First of all, the possession of the unit in question was to be offered by 31.12.2014. Further, the events alleged by the respondent do not have any impact on the project being developed by the respondent. Furthermore, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

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

**G.I Direct the respondent to pay delay possession charges, to handover possession of the unit and to execute conveyance deed in favour of the complainant as per the Act, 2016.**

19. In the present complaint, the complainant intends to continue with the project and is 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.”*

*(Emphasis supplied)*

20. Clause 15(a) of the apartment buyer’s agreement dated 09.08.2012 provides for handing over of possession and is reproduced below:

**15. POSSESSION**

*(a) Time of handing over the Possession*

*“Subject to terms of this clause and subject to the Allottee having complied with all the terms and condition of this Agreement and the Application, 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 DEVELOPERS, the DEVELOPERS propose to hand over **the possession of the Apartment by 31.08.2014** the Allottee agrees and understands that the DEVELOPERS shall be entitled to a grace period of **hundred and twenty days (120) days, for applying and obtaining the occupation certificate in respect of the Group Housing Complex.....”***

21. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainant not being in default under any provisions of these agreements and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee 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 date 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 allottee is left with no option but to sign on the dotted lines.

22. **Due date of handing over possession:** The promoter has proposed to hand over the possession of the unit by 31.08.2014. It is further provided in agreement that promoter shall be entitled to a grace period of 120 days for applying and obtaining the occupancy certificate in respect of the complex from the concerned authority. 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. 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, including a grace period of 120 days, the due date of handing over of possession comes out to be 31.12.2014.
24. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under.

***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., 20.11.2024 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(z) 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. The relevant section is reproduced below:

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

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

- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

28. 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 delay possession charges.
29. 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 authority has observed that the apartment buyer's agreement was executed on 09.08.2012 and the due date of possession was specifically mentioned in the apartment buyer's



agreement as 31.08.2014. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 31.12.2014. The respondent has failed to handover possession of the subject apartment till date of this order. Further, the authority observes that there is no document on record from which it can be ascertained as to whether the respondent has applied for occupation certificate or what is the status of construction of the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as to the allottees.

30. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at the prescribed rate i.e., @11.10% p.a. w.e.f. 31.12.2014 till offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
31. Further as per Section 11(4)(f) and Section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainant. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. However, there is nothing on the record to show that the promoter has applied for occupation certificate or what is the status of the development of the above-mentioned project. In view of the above, the respondent/promoter is directed to handover possession of the unit and execute conveyance





deed in favour of the complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months after obtaining occupation certificate from the competent authority.

**G. II Direct the respondent to to not to force the complainants to sign any indemnity cum undertaking as a precondition for signing the conveyance deed.**

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

**G. III Direct the respondent to provide the exact layout plan of the unit.**

33. As per Section 19(1) of the Act, the allottee is entitled to obtain information relating to sanctioned plans, layout plan along with specifications, approved by the competent authority and such other information as provided in this Act or rules and regulations made thereunder or the agreement for sale signed with the promoter. Therefore, in view of the same, the respondent is directed to provide the exact layout plan of the unit in question to the complainant within a period of 1 month from the date of this order.

**G. IV Direct the respondent to not to charge monthly maintenance charges for a period of 12 months or more before giving actual possession of the unit.**

34. **Maintenance charges:** - This issue has already been dealt by the authority in complaint titled as **Varun Gupta Vs. Emaar MGF Land Limited (supra)**, wherein, it is held that the respondent is right in demanding advance maintenance charges at the rates prescribed in the builder buyer's agreement at the time of offer of possession. However,





the respondent shall not demand the advance maintenance charges for more than one year from the allottees even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.

**H. Directions of the authority**

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

- i. The respondent/promoter is directed to pay interest to the complainant(s) against the paid-up amount at the prescribed rate of 11.10% p.a. for every month of delay from the due date of possession i.e., 31.12.2014 till offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- ii. The arrears of such interest accrued from 31.12.2014 till the date of this order shall be paid by the promoter to the allottee(s) within a period of 90 days and the interest for every month of delay shall be paid by the promoter to the allottee(s) before 10th of the subsequent month as per rule 16(2) of the rules.
- iii. The respondent/promoter is directed to handover possession of the unit/flat and execute conveyance deed in favour of the complainant(s) in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable,



- within three months after obtaining occupation certificate from the competent authority.
- iv. The rate of interest chargeable from the allottee(s) by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee(s), in case of default i.e., the delay possession charges as per section 2(z) of the Act.
  - v. The complainant(s) is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
  - vi. The respondent/promoter is further directed not to place any condition or ask the complainant to sign an indemnity of any nature whatsoever, which is prejudicial to her rights as has been decided by the authority in complaint bearing no. **4031 of 2019** titled as **Varun Gupta V. Emaar MGF Land Ltd.**
  - vii. The respondent/promoter shall not charge anything from the complainant(s) which is not part of the buyer's agreement.
  - viii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
36. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
  37. Complaint stands disposed of.
  38. File be consigned to registry.

**(Ashok Sangwan)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.11.2024