

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

Complaint no. : 7812 of 2022
Date of order : 19.02.2025

1. Tanya Narula
2. Sangeeta Narula
Both R/o: PTT-08-1001, Floor-10th,
Tower/Block-8, Palm Terraces at Palm Drive,
Sector-66, Gurugram, Haryana.

Complainants

Versus

M/s Emaar MGF Land Ltd.
Office at: - House 28, Kasturba Gandhi Marg,
New-Delhi-110001.

Respondent

CORAM:

Shri. Ashok Sangwan

Member

APPEARANCE:

Gaurav Rawat
Harshit Batra

(Advocate)
(Advocate)

Complainants
Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter

shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

- The particulars of unit details, 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:

Sr. No.	Particulars	Details
1.	Name of the project	"The Palm Terraces", Sector-66, Gurugram.
2.	Nature of project	Group housing
3.	RERA Registered	Registered Vide registration no.19 of 2018 Dated-01.02.2018
4.	DTCP License no.	License no. 228 of 2007 dated 27.09.2007 License no. 93 of 2008 dated 12.05.2008
5.	Unit no.	PTT-08-1001, Floor-10 th , Tower-08 (As on page no. 42 of complaint)
6.	Unit area	2100 sq.ft [Super-Area] (As on page no. 42 of complaint)
7.	Date of execution of buyer's agreement	14.06.2010 (As on page no. 41 of complaint)
8.	Possession clause	14. POSSESSION (a) Time of handing over the Possession <i>Subject to terms of this clause and the Allottee(s) having complied with all the terms and conditions of this Agreement</i>



		<p>and not being in default under any of the provisions of this Agreement and upon complying with all provisions, formalities, documentation etc., as prescribed by the Developer, the Developer shall make all efforts to handover possession of the Unit (which falls within ground plus four floors tower/building) within a period of thirty (30) months from the date of commencement of construction, and for the Unit(which falls within ground plus thirteen floor tower/building) within a period of thirty six (36) months from the date of commencement of construction, subject to certain limitations as may be provided in this Agreement and timely compliance of the provisions of this Agreement by the Allottee(s). the Allottee(s) agrees and understands that the Developer shall be entitled to a grace period of three (3) months, for applying and obtaining the occupation certificate in respect to the Unit and/or the Project.</p> <p>[Emphasis supplied]</p> <p>(As on page no. 54 of complaint)</p>
9.	Due date of possession	<p>24.09.2014</p> <p>[Calculated 36 months from date of start of construction i.e., 24.06.2011 + 3 months grace period]</p> <p>[Note: Vide proceedings dated 22.01.2025, the same has been inadvertently mentioned as 24.06.2014]</p>
10.	Sales consideration	<p>Rs.1,31,11,204/-</p> <p>(As per S.O.A dated 18.11.2019 on page no. 84 of complaint)</p>
11.	Amount paid by the complainant	<p>Rs.1,31,27,498/-</p> <p>(As per S.O.A dated 18.11.2019 on page no. 84 of complaint)</p>
12.	Occupation certificate	08.08.2019

13.	Offer of possession	19.08.2019 (As on page no. 78 of complaint)
14.	Unit handover letter	19.10.2019 (As on page no. 83 of complaint)
15.	Conveyance deed	17.12.2019 (As on page no. 87 of complaint)

B. Facts of the complaint

3. The complainants have made the following submissions: -

- I. That the respondent, M/s Emaar MGF Land Ltd. advertised about its new project namely "Palm Terraces At Palm Drive" on the 45.48 acres of land, in Sector 66 of the Gurugram and thereby invited applications from prospective buyers for the purchase of unit in the said project.
- II. That the complainants while searching for a flat/accommodation was lured by such advertisements and calls from the brokers of the respondent for buying a house in their project namely Palm Drive. Relying on the various representations and assurances given by the respondent and on belief of such assurances, the complainants booked a unit in the project by paying an amount of Rs.10,00,000/- on 07.05.2010, towards the booking of the unit bearing no. PTT-08-1001 on 10th Floor in Tower/Block-8, having super area measuring 2100 sq. ft. and the same was acknowledged by the respondent.
- III. That the respondent confirmed the booking of the unit to the original allottee for a total sale consideration of Rs.1,25,44,800/- along with car parking and other specifications of the allotted unit and provided the time frame for handing over possession of the unit. That a Buyer's Agreement was executed between the allottees and respondent on 14.06.2010.

- IV. Further, the complainants having dream of its own residential unit in NCR signed the agreement in the hope that the unit will be delivered on or before by 2014. The complainants were also handed over one detailed payment plan which was construction linked plan. As per clause 14(a) of the buyer's agreement, the respondent had to deliver the possession of the unit by 24.06.2014 (i.e., 36 months from the commencement of construction dated 24.06.2011) alongwith a grace period of 90 days for applying and obtaining the Occupation Certificate.
- V. As per the demands raised by the respondent, based on the payment plan, the complainants have already paid a sum of Rs.1,31,27,498/- against the total sale consideration of Rs.1,25,44,800/-.
- VI. That the complainants received the offer of possession on 19.08.2019 after many requests and emails. It is pertinent to note here that along with the above said letter of offer of possession, the respondent raised several illegal demands which were actually not payable as per the Builder Buyer Agreement.
- VII. That the complainants sent various reminder to respondents stating and raising various grievance with respect to delayed possession charges, air conditioners, grid power supply, car parking, solar panels, golf range, palm drive condominium association and HVAT. Furthermore, stating that solar panels has been installed in phase-1 of the project not in the tower of the complainants, as per the agreed terms of the booking and name of the project itself indicates that there will be golf range but till date respondents have failed to provide the same. Thereafter, various reminder emails and letters were sent to the respondents on the above mentioned issues but till date respondent failed to provide any satisfactory response to the complainants.

- VIII. That the complainants requested the respondent to show/inspect the unit before paying any further amount and requested to provide the car parking space but the respondent failed to reply. That the respondent asked the complainants to sign the indemnity bond as pre-requisite condition for handing over of the possession. The complainants raised an objection to the pre-requisite condition of the respondent as no delay possession charges was paid to the complainants but instead of paying the delay possession charges, the respondent clearly refused to handover.
- IX. That after clearing all the dues and fulfilling all one-sided demands and formalities as and when demanded by the respondent, the conveyance deed was executed in favour of the complainants on 17.12.2019. That the complainants are getting depressed because everyone is aware that golf view apartments are premium apartments and the complainants intend to stay within the amid of greens. Their dreams are getting shattered as respondent is not giving the Golf course at the specific location which was earmarked for the golf course. The complainants request the Authority to make sure that the respondent give golf course at the same location.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- a) Direct the respondent to pay delayed possession charges.
 - b) Direct the respondent to deliver the golf driving range at the designated location as promised at the time of booking.
 - c) Direct the respondent to provide the amenities and golf driving range at the designated location as per brochure and layout plan provided at the time of booking.
 - d) Initiate penal proceedings against the respondent on account of violation of various provisions of the Act, 2016 and for not getting the project registered.

- e) Set aside the one sided indemnity bond and settlement agreement signed by the respondent from the complainants under undue influence.
5. On the date of hearing, the Authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds: -
- I. That the complainants approached the respondent and expressed their interest in booking an apartment in the residential group housing colony developed by the respondent known as "Premier Terraces at Palm Drive" situated in Sector 66, Urban Estate Gurgaon, Haryana. Prior to the booking, the complainants conducted extensive and independent enquiries with regard to the project, only after being fully satisfied on all aspects they took an independent and informed decision, uninfluenced in any manner by the respondent and booked the unit.
 - II. That thereafter the complainants, vide an application form dated 07.05.2010 applied for provisional allotment of the unit in the project. Pursuant thereto, unit bearing no PTT-08-1001, located on the Tenth Floor, Tower-08 admeasuring 2100 sq. ft. was allotted vide Provisional Allotment Letter dated 21.05.2010.
 - III. Thereafter, a Buyer's Agreement dated 14.06.2010 was executed between the complainants and the respondent. 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 commencement of construction i.e., 24.06.2011 and a grace period of 3 months, i.e., 24.09.2014.
 - IV. The delivery of possession was subject to the *force majeure* circumstances. Further, the respondent faced certain other force majeure events including but not limited to non-availability of raw material due to various orders of

Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. It is pertinent to state that the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide Order dated 2.11.2015 mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna River bed. These orders in fact *inter-alia* continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High Court and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was almost 2 years that the scarcity as detailed aforesaid continued, despite which all efforts were made and materials were procured at 3-4 times the rate and the construction continued without shifting any extra burden to the customer. The time taken by the respondent to develop the project is the time taken to develop a project of such a large scale and despite all the *force majeure* circumstances, the respondent completed the construction of the project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the complainants and demanding the prices only as and when the construction was being done.

- V. That from the facts indicated above a period of 166 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of orders by the statutory authorities.
- VI. That despite the default caused, the respondent applied for Occupation Certificate in respect of the said unit on 11.01.2018 and the same was

thereafter issued on 08.08.2019. That on the receipt of the occupation certificate, the complainants were offered possession of the unit on 19.08.2019. The complainants were 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 complainants.

- VII. That the respondent has credited total amount of compensation of **Rs.18,50,000/-** as compensation due to alleged delay and **Rs.6,92,755/-** under the subvention scheme and **Rs.17,340/-** on account of anti-profiting, which was duly accepted by the complainants without any demur or protest.
- VIII. That thereafter, an indemnity cum undertaking for possession of the unit was executed between the complainants and the respondent on 24.08.2019 whereby the complainants have declared and acknowledged that they have no ownership right, title or interest in any other part of the project except in the unit area of the unit in question.
- IX. That the complainants took the possession of the unit on 19.10.2019 and consequently, the Conveyance Deed was executed on 17.12.2019. That moreover, after the execution of the Conveyance deed, the contractual relationship between the Parties stands fully satisfied and comes to an end. That there remains no claim/ grievance of the complainants with respect to the Agreement or any obligation of the parties thereunder.
- X. That after the execution of the conveyance deed, the parties are estopped from making any claims at this instance. That after the execution of the Conveyance deed, the contractual relationship between the parties stands fully satisfied and comes to an end. That after the execution of the conveyance deed, the parties are estopped from making any claims at this instance.

- XI. That the offer of possession of the unit was issued to the complainant on 19.08.2019 and the present complaint was filed on 14.12.2022, i.e., after a delay of 1213 days (3 years 3 months 25 days). After the offer of possession, no cause of action pertains. Moreover, the physical possession is given to the complainants and conveyance deed was executed over 3 years ago and hence the present complaint is barred by limitation. That moreover, the delayed interest if any has to be calculated only on the amounts deposited by the complainants towards the basic principal amount of the unit and not on any amount credited by the respondent, or any payment made by the complainants towards delayed payment charges (DPC) or any taxes/statutory payments, etc.
- XII. That the complainants have sought relief against the respondent to deliver the Golf Driving Range to them, which cannot be entertained. It is denied that the brochure boasted any extensive recreation facilities. It is submitted that the Gold Driving Range was a proposed amenity and did not form part of the contractual obligation of the respondent mentioned in the Buyer's Agreement. That the Buyer's Agreement does not mention any such amenity to be provided to the complainant hence, any obligation on the part of the promoter cannot be create
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

8. The 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

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

E. II Subject matter jurisdiction

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

Section 11(4)(a)

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

11. So, in view of the provisions of the Act quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter.

F. Findings on the objections raised by the respondent.**F. I Whether the complainants can claim delayed possession charges after execution of the conveyance deed?**

12. The respondent stated that the conveyance deed of the unit has already been executed in favour of the complainants on 17.12.2019 and the transaction between the parties stands concluded upon the execution of conveyance deed.

13. The respondent has argued that upon the execution of the conveyance deed, the relationship between the parties is considered concluded, precluding any further claims or liabilities by either party. Consequently, the complainant is barred from asserting any interest in light of the circumstances of the case.
14. In order to comprehend the relationship between the allottee and the promoter, it is essential to understand the definition of a "deed." A deed is a formal, written document that is executed, signed, and delivered by all parties involved in the contract, namely the buyer and the seller. It is a legally binding document that incorporates terms enforceable by law. For a sale deed to be valid, it must be written and signed by both parties. Essentially, a conveyance deed involves the seller transferring all rights to legally own, retain, and enjoy a particular asset, whether immovable or movable. In the present case, the asset in question is immovable property. By signing a conveyance deed, the original owner transfers all legal rights pertaining to the property to the buyer in exchange for valid consideration, typically monetary. Thus, a "conveyance deed" or "sale deed" signifies that the seller formally transfers all authority and ownership of the property to the buyer.
15. That the execution of a conveyance deed transfers only the title and interest in the specified immovable property (in this case, the allotted unit). However, the conveyance deed does not terminate the relationship between the parties or absolve the promoter of their obligations and liabilities concerning the unit, despite the transfer of title and interest to the allottee upon execution of the conveyance deed.
16. The allottees have invested their hard-earned money and there is no doubt that the promoter has been enjoying benefits of and the next step is to get their title perfected by executing the conveyance deed which is the

statutory right of the allottees. Also, the obligation of the developer-promoter does not end with the execution of a conveyance deed. Therefore, in furtherance to the Hon'ble Apex Court judgement and the law laid down in case titled as ***Wg.Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd. (now known as BEGUR OMR Homes Pvt. Ltd.) and Ors. (Civil appeal no. 6239 of 2019) dated 24.08.2020***, the relevant paras are reproduced herein below:

"34 The developer has not disputed these communications. Though these are four communications issued by the developer, the appellants submitted that they are not isolated aberrations but fit into the pattern. The developer does not state that it was willing to offer the flat purchasers possession of their flats and the right to execute conveyance of the flats while reserving their claim for compensation for delay. On the contrary, the tenor of the communications indicates that while executing the Deeds of Conveyance, the flat buyers were informed that no form of protest or reservation would be acceptable. The flat buyers were essentially presented with an unfair choice of either retaining their rights to pursue their claims (in which event they would not get possession or title in the meantime) or to forsake the claims in order to perfect their titles to the flats for which they have paid valuable consideration. In this backdrop, the simple question which we need to address is whether a flat buyer who espouses a claim against the developer for delayed possession can as a consequence of doing so be compelled to defer the right to obtain a conveyance to perfect their title. It would, in our view, be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, the purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance to forsake the right to claim compensation. This basically is a position in which the NCDRC has espoused. We cannot countenance that view.

17. The Authority has already taken a view in Cr. No. 4031/2019 and others titled as ***Varun Gupta V/s Emaar MGF Land limited and others*** and observed that the execution of a conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the subject unit and upon taking possession, and/or executing conveyance deed, the complaints never gave up their statutory right to seek delayed possession charges as per the provisions of the said Act.
18. Upon reviewing all relevant facts and circumstances, the Authority determines that the complainants/allottees retain the right to seek

compensation for delays in possession from the respondent-promoter, despite the execution of the conveyance deed.

F.II Whether the complaint is barred by limitation or not?

19. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the Authority has observed that according to the terms of the agreement, possession of the unit was to be offered within 36 months from the date of start of construction plus an additional 3 months grace period is allowed to the respondent, in terms of the agreement. Therefore, the due date for possession, considering the grace period was 24.09.2014. The respondent obtained the occupation certificate for the relevant tower on 08.08.2019. An offer of possession was made to the complainants on 19.08.2019, and the unit was formally handed over on 19.10.2019, as indicated by the handover letter dated 19.10.2019.
20. The Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Authority Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is universally accepted maxim and the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.
21. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in **MA NO.21 of 2022 of Suo Moto Writ Petition Civil No.3 of 2020** have held that the period from 15.03.2020 to 28.02.2022 shall stand

excluded for purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

22. In the present matter the cause of action arose on 19.08.2019 when the offer of possession was made by the respondent. The complainants have filed the present complaint on 14.12.2022, the Authority is of the view that the present complaint has been filed within a reasonable time period and is not barred by the limitation.

F.III. Objection regarding force majeure circumstances.

23. The respondent-promoter has raised a contention that the handover of the unit was delayed due to force majeure conditions such as various orders passed by the National Green Tribunal, Environment Pollution (Prevention & Control) Authority and stoppage of work due to the order of various authorities. Since there were circumstances beyond the control of respondent, so taking into consideration the above-mentioned facts, the respondent be allowed the period during which his construction activities came to stand still, and the said period be excluded. The Authority is of the view that though there have been various orders issued to curb the environment pollution, but these were for a short period of time. So, the circumstances/conditions after that period can't be taken into consideration for delay in completion of the project.

G. Findings regarding relief sought by the complainants:

G. I Direct the respondent to pay delayed possession charges.

24. Vide proceedings dated 22.01.2025, the respondent and the complainants were granted an opportunity to file written submissions and in compliance of the same, the respondent filed written submissions on 11.02.2022. In the written submissions, the respondent have made a submission that the

complainants have not sought the relief of delayed possession charges however during the proceedings on 22.01.2025, the complainants alleged that delayed possession charges be paid and have not sought the said relief in the complaint. The Authority observes that the relief with respect to the delayed possession charges have been sought by the complainants in the "FORM-CRA" at page no. 4-5 of the complaint and thus, the Authority is adjudicating on the said relief.

25. In the present complaint, the complainants intends to continue with the project and are seeking possession of the unit and delayed possession charges as per section 18(1) of the Act and the same is reproduced below for ready reference:

"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)

26. Clause 14(a) of the Buyer's Agreement (in short, the agreement) dated 14.06.2010 provides for handing over possession and the same is reproduced below:

14(a) Time of handing over the Possession

"Subject to terms of this clause and 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 upon complying with all provisions, formalities, documentation etc., as prescribed by the Developer, the Developer shall make all efforts to handover possession of the Unit (which falls within ground plus four floors tower/building) within a period of thirty (30) months from the date of commencement of construction, and for the Unit (which falls within ground plus thirteen floors tower/building) **within a period of thirty six (36) months from the date of commencement of construction**, subject to certain limitations as may be provided in this Agreement and timely compliance of the provisions of this Agreement by the Allottee(s). The Allottee(s) agrees and understands that the Developer shall be entitled to a **grace period of three (3) months**, for applying and obtaining the occupation certificate in respect of the unit and/or the Project.

[Emphasis supplied]

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27. The Buyer's agreement was executed on 14.06.2010. As per clause 14 (a) of the agreement, the respondent was to offer the possession of the unit to the allottees within 36 months from the date of commencement of construction. The date of commencement of construction of the unit is 24.06.2011 as evident from the Statement of accounts annexed at page no. 84 of complaint. Thus, the Authority have calculated 36 months from the date of commencement of construction, also the grace period of 3 months is allowed to the respondent/promoter. Therefore, the due date comes out to be 24.09.2014.
28. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges however, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:
- Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***
- (1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*
- Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*
29. 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.
30. 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., 19.02.2025,

is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.

31. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "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;"*
32. 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 Buyer's Agreement was executed on 14.06.2010 between the complainants and the respondent. The possession of the subject unit was to be offered within a period of 36 months from the date of commencement of construction plus a grace period of 3 months. The Authority calculated due date of possession from the date of commencement of construction i.e., 24.06.2011 along with a grace period of three months which comes out to be 24.09.2014. The occupation certificate in respect to the subject unit has been obtained by the respondent on 08.08.2019 from the competent authorities and the offer of possession was made to the complainants on 19.08.2019. The

respondent has failed to handover possession of the subject unit on the due date.

33. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The Authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainants as per the terms and conditions of the Buyer's Agreement dated 14.06.2010 executed between the parties. Further, the Authority observes that the respondent obtained the occupation certificate on 08.08.2019 and offered possession to the complainants on 19.08.2019 and the conveyance deed was executed on 17.12.2019.
34. The respondent has paid Rs.18,50,000/- as compensation due to the delay and Rs.6,92,755/- under the subvention scheme and Rs.17,340/- on account of anti-profiting and the same is reflected in the Statement of account and if any interest is payable to the complainants it has to be calculated only on the amount deposited by the complainants towards the basic principal amount of the unit and not on any amount credited by the respondent.
35. 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 the 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.
36. In light of the above, 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 on the compensation/rebate given by the respondent company.
37. Accordingly, the non-compliance of the mandate contained in section 11(4) (a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to delay possession charges at rate of the prescribed interest @ 11.10% p.a. w.e.f. 24.09.2014 till the date of offer of possession plus two months after obtaining the occupation certificate, after adjustment/deduction of the amount already paid, if any towards delay in handing over of possession as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- G.II. Direct the respondent to deliver the golf driving range at the designated location as promised at the time of booking.
- G.III Direct the respondent to provide the amenities and golf driving range at the designated location as per brochure and layout plan provided at the time of booking.
- G.IV Initiate penal proceedings against the respondent on account of violation of various provisions of the Act, 2016 and for not getting the project registered.
- G.V Set aside the one sided indemnity bond and settlement agreement signed by the respondent from the complainants under undue influence.

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38. The Authority has already taken a view in Cr. No. 4031/2019 and others titled as *Varun Gupta V/s Emaar MGF Land limited and others* and observed that the execution of a conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the subject unit and upon taking possession, and/or executing conveyance deed, the complainants never gave up their statutory right to seek delayed possession charges as per the provisions of the said Act.
39. Therefore, after execution of the conveyance deed the complainants-allottees cannot seek reliefs 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: -

40. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the authority under sec 34(f) of the Act: -
- The respondent/promoter shall pay interest at the prescribed rate i.e., 11.10% for every month of delay on the amount paid by the complainants from the due date of possession i.e., 24.09.2014 till the date of offer of possession plus two months after obtaining the occupation certificate, after adjustment/deduction of the amount already paid if any towards delay in handing over of possession as per proviso to section 18(1) of the Act read with rule 15 of the rules.
 - The respondent is directed to pay arrears of interest accrued, if any , after adjustment in statement of account, within 90 days from the date of this order as per rule 16(2) of the Act.

41. Complaint as well as applications, if any, stands disposed of.
42. File be consigned to the registry

Dated: 19.02.2025

(Ashok Sangwan)

Member

Haryana Real Estate
Regulatory Authority,
Gurugram



HARERA
GURUGRAM