



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

**Complaint no. :** 2242 of 2022  
**Date of first hearing :** 08.09.2022  
**Date of decision :** 28.01.2025

1. Mr. Vijay Kumar Jain  
2. Mrs. Cheenu Jain  
Both RR/o: S-20/001, Palm Drive, Sector- 66, Gurugram  
Haryana (122018).

**Complainants**

Versus

M/s Emaar India Limited.  
Address: 306-308, Square One, C-2, District Centre,  
Saket New Delhi- 110017.

**Respondent**

**Coram:**

Shri Arun Kumar  
Shri Vijay Kumar Goyal  
Shri Ashok Sangwan

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

**Appearance:**

Shri Vijender Parmar  
Shri Ishaan Dang

Advocate for the complainants  
Advocate for the respondent

**ORDER**

1. The present complaint has been filed by the complainant/allottees in Form CRA 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 to the allottees as per the agreement for sale executed inter se them.  
**A. Project and unit related details**
2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:



S. No.	Particulars	Details
1.	Name of the project	Premier Terraces at the Palm Drive, Sector 66, Gurugram, Haryana
2.	Unit no.	PTF-20-0001, ground floor, tower 20 admeasuring 2100sq. ft. [page 46 of reply]
3.	Provisional allotment letter dated	27.04.2010 [annexure R2, page 39 of reply]
4.	Date of execution of buyer's agreement	30.08.2010 [page 45 of reply]
5.	Possession clause	<b>14. POSSESSION</b> <b>(a) Time of handing over the Possession</b> <i>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 compliance 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 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 <b>grace period of three (3) months</b>, for applying and obtaining the occupation certificate in respect of the Unit and/or the Project.</i>



		(Emphasis supplied) [Page 58 of reply]
6.	Date of commencement of construction as per statement of account dated 04.06.2022 at page 96 of reply	28.06.2011
7.	Due date of possession	28.03.2014 [Note: 3 months Grace period is allowed] (Note:- Inadvertently mentioned in proceeding of the day dated 28.01.2025)
8.	Total consideration as per statement of account dated 04.06.2022 at page 96 of reply	Rs.1,46,56,567/-
9.	Total amount paid by the complainant as per statement of account dated 04.06.2022 at page 97 of reply	Rs.1,48,97,302/-
10.	Occupation certificate	25.01.2018 (Page 104 of reply)
11.	Offer of possession	20.02.2018 [Page 108 of reply]
12.	Unit handover letter issued in favour of the complainants on	21.08.2018 [Page 116 of reply]
13.	Conveyance deed executed on	08.01.2019 [Page 117 of reply]
14.	Delay compensation paid by the respondent in terms of the buyer's agreement as per statement of account	Rs.3,62,208/-

dated 04.06.2022 at page  
97 of reply

**B. Facts of the complaint**

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

- i. That based on the respondent's advertisements and representations, the complainants booked a unit bearing no. PTF-20-0001 located on ground floor situated in tower/block no. 20 having super area of 195.1 sq. mtr. (2100 sq. ft.) in the respondent's project 'The Palm Terraces' through Planet Landbase Private Limited and deposited the booking amount of Rs.10,00,000/- vide three cheques dated 07.04.2010. After that the respondent issued a provisional allotment letter dated 27.04.2010 to the complainants wherein the receipt of the booking amount of Rs.10 Lakhs was acknowledged and a further demand of Rs.15,78,537.50/- was raised upon the complainants. The demanded amount was payable within 45 days from the date of booking, as per the schedule of payment of the subvention scheme, opted by the complainants. Provisional allotment letter dated 27.04.2010, the respondent also specified that the apartment buyer's agreement would be forwarded to the complainant shortly.
- ii. Thereafter, the respondent shared the draft copy of the apartment buyer's agreement with the complainants around May-June 2010. Pursuant thereto, vide emails dated 04.07.2010, 09.07.2010 and 12.07.2010, the complainants raised their objections to various one-sided clauses in the buyer's agreement which only safeguarded the rights of the respondent.
- iii. That vide email dated 19.07.2010, the respondent sent its responses to the queries raised by the complainants. the said email dated 19.07.2010, the respondent had specifically assured to the complainants that in the event the unit ceases to be preferentially located, then the respondent



- shall refund the amount paid by the complainants towards 'preferential location charges'.
- iv. That however, upon most of the responses of the respondent being found unsatisfactory and evasive, the complainants vide email dated 23.07.2010, expressed their dissatisfaction with the responses of the respondent, and further sought detailed discussion and deliberation on various points/clauses of the buyer's agreement. That vide the said email dated 23.07.2010, the complainants had also categorically stated that in case the respondent is not able to provide any suitable addendum to the buyer's agreement, then the complainants would want the refund of the allotment amount with interest. Furthermore, the complainants also requested for a meeting on 01.08.2010 at the respondent's office address. Again, vide email dated 28.07.2010, the complainants conveyed their dissatisfaction with the response to the queries from the respondent's end and further requested for a meeting with the respondent's senior official for addressing the issues.
- v. That on 05.08.2010, a meeting between the complainant no. 1 and the respondent's employee (Assistant General Manager-Customer Relations) was convened wherein the respondent again assured the complainants that in the event the unit ceases to be preferentially located, then the respondent shall refund the amount paid by the complainants towards 'preferential location charges'.
- vi. That thereafter, a letter dated 19.08.2010, was issued by the respondent to the complainants in respect of the subvention scheme, which specified that the respondent would bear the entire interest till 30.04.2012 on behalf of the complainants and the interest would be paid directly to the bank on behalf of the complainant and that the subvention would be available till 31.08.2010. The said letter further specified that upon



- completion of the 30.04.2012, the EMI (inclusive of principal plus interest) shall become due and payable by the complainants directly to the bank.
- vii. That upon the specific refusal of the respondent to alter/modify certain one-sided clauses in the draft buyer's agreement despite multiple requests by the complainants, the complainants as such owing to fear of forfeiture of their booking amount and under immense pressures, both financial and otherwise, agreed to signing on the draft buyers' agreement. Thereafter, the complainants and the respondent entered into the buyer's agreement dated 30.08.2010, in respect of the sale and purchase of unit no. PTF 20-001 in the project of the respondent i.e., 'The Palm Drive'. Vide letter dated 30.08.2010, the respondent forwarded the duly executed copy of the buyer's agreement to the complainants.
- viii. That thereafter, complainants vide email dated 29.08.2016, to the respondent, highlighted the material default/breach on part of the respondent in its failure to handover possession of the complainants' unit in accordance with the terms of the buyer's agreement, and accordingly requested the respondent to expedite the handover/possession of the Complainants' unit. Thereafter, the respondent vide letter dated 20.02.2018, issued the offer of possession in respect of the unit to the complainants and demanded payment of an amount of Rs.18,05,459/-. That pursuant thereto, vide email dated 12.03.2018, addressed to the respondent, the complainants highlighted the following irregularities in the letter dated 20.02.2018 issued by the respondent vide which the demand for payment of Rs.18,05,459/- was made by the respondent.
- ix. That the said email, the complainants had requested the respondent to issue a revised demand letter towards the payment of the last installment, and also a fresh letter of offer of possession after



incorporating all requisite rectifications. Despite multiple protests and follow-ups by the complainants, the respondent did not rectify the irregularities in its letter dated 20.02.2018, and as a result, the complainants were coerced into paying the amount of Rs.18,05,459/-, to expedite the handover of possession of the unit.

- x. That thereafter, the possession of the unit was handed over to the complainants by the respondent on 21.08.2018, i.e. after a delay of approx. 56 months from the stipulated date of handover of possession in the buyer's agreement. That on 08.01.2019, a conveyance deed in respect of the unit was executed between the respondent and the complainants and accordingly, registered at the office of the Sub-Registrar, Gurugram. That on 27.07.2020, it came to the knowledge of the complainants that a complaint was made to the District Town Planner (Enforcement), Gurugram by the then President of Palm Drive Condominium Association ("RWA") alleging violation of the license and approved plans for Emaar Palm Drive, including encroachment of the 6 meter Fire Lane all over the boundary of the gated colony and no pathway for the fire tender to pass.
- xi. That pursuant thereto, a show-cause notice dated 31.12.2020 was issued to the respondent and the RWA by District Town Planner (Enforcement), Gurugram under Section 10(2) of Haryana Development and Regulations of Urban Areas Act, 1975 alleging violation of the provisions of Section 3B of the Act for not constructing the fire tender path in accordance with the approved sanctioned layout plan.
- xii. That thereafter, an order dated 25.01.2021, issued by the District Town Planner (Enforcement) to the respondent and the RWA directing to remove the violation under Section 3B of the Act and bring the same in conformity with the approved plans as well as the provisions of the Act failing which appropriate legal action would be taken to give effect to the

order and to recover the cost of such measures as arrears of land revenue in accordance with section 10(3) of the Act.

- xiii. That the respondent has charged Rs.16,53,750/-, Rs.5,12,880/-, Rs.88,500/- and Rs.2,10,000/- respectively towards preferential location charges, open parking space, club membership charges and IBMS deposit and the same facility has not been provide by the respondent/promoter and the respondent is liable to refund the said amount along with interest. The complainants are also entitled to the refund of Rs.4,48,043/- illegally collected by the respondent from the complainants towards service tax charges, given that there is no machinery provision for ascertaining the service element involved in the buyer's agreement and/or for ascertaining the value of the service involved in the buyer's agreement. The complainants are also entitled to the refund of the amount of Rs.1,10,425/- charged by the respondent towards GST, given the fact that original due date of possession of the complainants' unit was 28.12.2013 which is prior to the coming into force of GST and the delays in handing over of the possession were completely attributable to the respondent. Therefore, the complainant is not liable to be charged for the GST amount as levied by the respondent.
- xiv. That thereafter, a legal notice dated 20.12.2021 was issued to the respondent by the complainants through their advocate, demanding various amounts due to the complainants from the respondent's end, owing to the material breaches and defaults on part of the respondent. Till date, neither any reply in respect of the legal notice dated 20.12.2021 by the respondent has been received by the complainants, nor any payments due to the complainants have been received from the respondent.





xv. That the cause of action for filing the present complaint first arose in favour of the complainants and against the respondent on 01.07.2010 when the complainant no. 1 visited the office of the respondent and further arose in favour of the complainants and against the respondent on 04.07.2010, 09.07.2010 and 12.07.2010 when the complainants vide their Email dated 04.07.2010, 09.07.2010 and 12.07.2010 to the respondent, highlighted their concerns regarding the buyer's agreement being completely one-sided. The cause of action further arose in favour of the complainants and against the respondent on 28.12.2013 owing to the failure of the respondent to delivery timely possession of the unit to the complainants in violation of the terms and conditions of the buyer's agreement. Hence, the complainants has filed the complaint.

**C. Relief sought by the complainants**

4. The complainant has filed the present complaint for seeking following reliefs:
- i. Direct the respondent to pay delay possession charges to the complainants for every month of delay till handing over of possession in respect of the delay of approx. 56 months in delivery of the possession of the complainants unit on the amount paid by the complainant at the prescribed rate of interest.
  - ii. Direct the respondent to refund an amount of Rs.16,53,750/- to the complainants against preferential location charges paid by the complainants, in view of the complainants' unit having ceased to be preferentially located;
  - iii. Direct the respondent to refund an amount of Rs.5,12,880/- to the complainants, illegally collected by the respondent against open parking charges, whereas the said charges form part of the basic sale price as per law;
  - iv. Direct the respondent to refund an amount of Rs.88,500/- to the complainants, illegally collected by the respondent, over and above the onetime amount stipulated in the buyer's agreement against club membership charges;



- v. Direct the respondent to pay to the complainants the amount against interest accrued till date on the IBMS deposit made by the complainants;
  - vi. Direct the respondent to refund an amount of Rs.4,48,043/- to the complainants on account of service tax, illegally collected by the respondent;
  - vii. Direct the respondent to refund an amount of Rs.1,10,425/- to the complainants on account of GST, illegally collected by the respondent;
  - viii. Direct the respondent to refund an amount of Rs.52,500/ to the complainants on account of excess registration charges, illegally collected by the respondent.
5. On the date of hearing, the authority explained to the respondent /promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act and to plead guilty or not to plead guilty.

**D. Reply by the respondent**

6. The respondent has raised certain preliminary objections and has contested the present complaint on the following grounds:
- i. That the present complaint is not maintainable before this Authority. The complainants have filed the present complaint seeking interest, refund and litigation cost etc. on account of alleged delay in delivering possession of the apartment booked by the complainants. The complainants 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 30.08.2010, as shall be evident from the submissions made in the following paras of the present reply.
  - ii. That the complainants had approached the respondent sometime in the year 2010 for purchase of an independent unit in its upcoming residential project "The Palm Terraces" at the Palm Drive, Sector 66, Gurugram. Thereafter, the complainants vide application form dated



06.04.2010 applied to the respondent for provisional allotment of a unit in the project. The complainants, in pursuance of the aforesaid application form, were allotted an independent unit bearing no. PTF-20-0001 located in the said project vide provisional allotment letter dated 27.04.2010. The complainants consciously and willfully opted for a subvention payment plan for remittance of the sale consideration for the unit in question and further represented to the respondent that they shall remit every installment on time as per the payment schedule. The buyer's agreement dated 30.08.2010 was willingly and consciously executed by the complainants.

- iii. That right from the beginning, the complainants were irregular regarding the remittance of installments on time. The respondent was constrained to issue several payment request letters, reminders etc. to the complainants requesting him to make payment of outstanding amounts payable by them under the payment plan opted by him. Payment request letters and reminders got sent to the complainants by the respondent clearly mentioning the amount that was outstanding and the due date for remittance of the respective amounts as per the schedule of payment. The respondent vide the said letters further requested the complainants to timely discharge his outstanding financial liability. Statement of accounts dated 04.06.2022, correctly maintained by the respondent in due course of its business reflecting the delay in remittance of various instalments on the part of the complainants.
- iv. That the rights and obligations of complainants and the respondent are completely and entirely determined by the covenants incorporated in the buyer's agreement which continue to be binding upon the parties thereto with full force and effect. Clause 14 of the buyer's agreement provides that subject to the allottees having complied with all the terms and



conditions of the agreement, and not being in default of the same, possession of the unit would be handed over within 36 months plus grace period of 3 months, from the date of commencement of construction (28.06.2011). It is further provided in the buyer's agreement that time period for delivery of possession shall stand extended on the occurrence of delay for reasons beyond the power and control of the respondent.

- v. Further, as per clause 16 of the buyer's agreement further provides that in case of delay caused due to non- receipt of occupation certificate, completion certificate or any other permission/sanction from the competent authorities, no compensation or any other compensation shall be payable to the allottees. The provisions of the Act relied upon by the complainants for seeking interest cannot be called in to aid, in derogation and ignorance of the provisions of the buyer's agreement. The respondent has completed construction of the project on 21.04.2017 and had applied for occupation certificate on 30.06.2017. The respondent had received occupation certificate dated 25.01.2018 from the concerned statutory authority. It would not be out of place to mention that application for RERA Registration had been filed on 11.08.2020 and the same was approved on 10.09.2020.
- vi. That once an application for grant of occupation certificate is submitted for approval in the office of the concerned statutory Authority, the respondent ceases to have any control over the same. The grant of sanction of the occupation certificate is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence. As far as the respondent is 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 utilised by the statutory authority to grant occupation certificate to the respondent is necessarily required to be excluded from computation of the time period utilised for implementation and development of the project.

- vii. That the complainants were offered possession of the unit in question through letter of offer of possession dated 20.02.2018. 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. The respondent explained to the complainants that they were not entitled to any compensation or interest in terms of the buyer's agreement on account of default in timely remittance of instalments as per schedule of payment incorporated in the buyer's agreement. Nevertheless, compensation amounting to Rs.3,62,208/- was paid to the complainants by the respondent as a gesture of goodwill. The same was duly accepted by the complainants in full and final settlement of their claim and thereafter the complainants proceeded to take possession of the unit on 21.08.2018.
- viii. That thereafter, the conveyance deed bearing vasika no. 11610 dated 08.01.2019 was also registered in favour of the complainants. Therefore, the transaction between the complainants and the respondent has been concluded in January, 2019 and the complainants are not left with any claim against the respondent. Institution of the present complaint more than three years from the date of possession and from the date of registration of the conveyance deed in their favour is nothing but a gross misuse of process of law by the complainants and the complaint is barred by limitation. Moreover, the complainants have alleged that the possession of the unit was to be given not later than December, 2013 and



therefore cause of action, if any, accrued in favour of the complainants in December, 2013. It is submitted that the cause of action, if any, for filing of the present complaint arose prior to the date of coming into force of the present Act or Rules made thereunder. The false and frivolous complaint is nothing but an afterthought and is barred by limitation and liable to be dismissed on this ground alone.

- ix. Without admitting or acknowledging in any manner the truth or correctness of the frivolous allegations levelled by the complainant and without prejudice to the contentions of the respondent, it is submitted that the alleged interest frivolously and falsely sought by the complainants was to be construed for the alleged delay in delivery of possession. An offer for possession marks termination of the period of delay, if any. The complainants are not entitled to contend that the alleged period of delay continued even after receipt of offer for possession. The present complaint preferred by the complainants is nothing but an abuse of process of law. Without admitting or acknowledging in any manner the truth or legality of the allegations levelled by the complainant and without prejudice to the contentions of the respondent, it is submitted that the project has got delayed on account which are beyond the power and control of the respondent.
- x. That the complainants had defaulted in timely remittance of installments to the respondent, the same is duly reflected in the statement of account dated 04.06.2022 correctly maintained by respondent in due course of its business. The complainants, therefore, is not entitled to any compensation/interest in accordance with clause 16 of the buyer's agreement. The complainants consciously and maliciously chose to ignore the payment request letters and reminders issued by the respondent and flouted in making timely payments of the instalments



which was an essential, crucial and an indispensable requirement under the buyer's agreement. Furthermore, when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially and further causes enormous business losses to the respondent. The complainant chose to ignore all these aspects and wilfully defaulted in making timely payments. The respondent despite defaults of several allottees earnestly fulfilled its obligations under the buyer's agreement and completed the project as expeditiously as possible in the peculiar facts and circumstances of the case. Therefore, there is no equity in favour of the complainant.

xi. That all the demands that have been raised by the respondent are strictly in accordance with the terms and conditions of the buyer's agreement duly executed and agreed to between the parties. There is no default or lapse on the part of the respondent. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainants are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

7. The complainants and respondent have filed the written submissions on 30.01.2024 and 25.04.2024 respectively which are taken on record and has been considered by the Authority while adjudicating upon the relief sought by the complainants.

**E. Jurisdiction of the Authority**

8. The preliminary objections raised by the respondent regarding jurisdiction of the authority to entertain the present complaint stands rejected. The Authority observed 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, Haryana the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with office 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 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.

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 as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

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

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



12. One of the contentions of the respondent is that the authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties' interest in accordance with the buyer's agreement executed between the parties. The respondent further submitted that the provisions of the Act are not retrospective in nature and the provisions of the Act cannot undo or modify the terms of buyer's agreement duly executed prior to coming into effect of the Act.
13. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Hon'ble Bombay High Court in Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others.** (W.P 2737 of 2017) which provides as under:
- "119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.....
122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and

*discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."*

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

*"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."*

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

**F.II Objection regarding the complaint being barred by limitation.**

16. The counsel for the respondent submitted that the complainant has filed the present complaint on 24.05.2022 after execution of conveyance deed on 08.01.2019. Therefore, the present complaint is barred by limitation. But the counsel for the complainant submitted that limitation is not applicable qua these proceedings, and submitted a copy of order passed Hon'ble Real Estate Regulatory Authority, Punjab wherein it has been held that the benefits under the Act are not barred by limitation.

17. Though both the parties through their respective counsel advanced submissions with regard to the maintainability of the complaint on the ground of the limitation but in view of settled proposition of law, the case of complainant cannot be thrown away being barred by limitation. As discussed earlier, the subject unit was allotted on 27.04.2010. Though the possession of the unit was to be offered on or before 28.09.2014 after completion of the project but the same was offered only on 20.02.2018 after receipt of occupation certificate on 25.01.2018 and ultimately leading to execution of conveyance deed of the same on 08.01.2019.
18. So far as the issue of limitation is concerned, 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.
19. 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.
20. In the present matter the cause of action arose on 20.02.2018 when the offer of possession was made by the respondent. The complainants have filed the present complaint on 24.05.2022 which is 4 years 3 months and 4 days from the date of cause of action. In the present case the three year period of delay in

filing of the case also after taking into account the exclusion period from 15.03.2020 to 28.02.2022 would fall on 02.02.2023. In view of the above, 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 Whether the execution of the conveyance deed extinguishes the right of the allottee to claim delay possession charges?**

21. The respondent submitted that the complainant had executed the conveyance deed on 08.01.2019 and therefore, the transaction between the complainants and the respondent have been concluded and no right or liability can be asserted by respondent or the complainant against the other. Therefore, the complainants are estopped from claiming any interest in the facts and circumstances of the case.
22. In the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.**, the authority has comprehensively dealt with this issue and has held that taking over the possession and thereafter execution of the conveyance deed can best be termed as respondent having discharged its liabilities as per the buyer's agreement and upon taking possession, and/or executing conveyance deed, the complainant never gave up their statutory right to seek delayed possession charges as per the provisions of the said Act. Also, the same view has been upheld by the Hon'ble Supreme Court 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 a 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 right 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 title to the flats for which they had paid valuable consideration. In this backdrop, the simple question which we need to address is whether a flat buyer who seeks to espouse 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 which the NCDRC has espoused. We cannot countenance that view.*

35. *The flat purchasers invested hard earned money. It is only reasonable to presume that the next logical step is for the purchaser to perfect the title to the premises which have been allotted under the terms of the ABA. But the submission of the developer is that the purchaser forsakes the remedy before the consumer forum by seeking a Deed of Conveyance. To accept such a construction would lead to an absurd consequence of requiring the purchaser either to abandon a just claim as a condition for obtaining the conveyance or to indefinitely delay the execution of the Deed of Conveyance pending protracted consumer litigation."*

23. Therefore, in furtherance of **Varun Gupta V/s Emaar MGF Land Ltd. (supra)** and the law laid down by the hon'ble Apex Court in the **Wg. Cdr. Arifur Rahman (supra)**, this authority holds that even after execution of the conveyance deed, the complainant cannot be precluded from his right to seek delay possession charges from the respondent-promoter.

**G. Findings on the reliefs sought by the complainants**

**G.I Direct the respondent to pay delay possession charges to the complainants for every month of delay till handing over of possession in respect of the delay of approx. 56 months in delivery of the possession of the complainants unit on the amount paid by the complainant at the prescribed rate of interest.**

24. In the present complaint, the complainants intend 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."*

25. Clause 14(a) of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

**"14. POSSESSION**

**(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 compliance 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 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."*

26. **Due date of possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 30 months from the date of commencement of construction and it is further provided in agreement that promoter shall be entitled to a grace period of three months for applying and obtaining completion certificate/occupation certificate in respect of said floor. The construction commenced on 28.06.2011 as per statement of account dated 04.06.2022. The period of 30 months expired on 28.12.2013. Further, the respondent/builder has submitted that a grace period of three months may be allowed to it for applying and obtaining the completion certificate/occupation certificate in respect of the unit and/or the project 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 Lamd 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.”*

27. Therefore, in view of the above judgement and considering the provisions of the Act, the authority is of the view that, the promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the occupation certificate. Therefore, the due date of handing over of possession comes out to be 28.03.2014 including grace period of five months.

28. **Admissibility of delay possession charges at prescribed rate of interest:**

The 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 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., 28.01.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
31. **Rate of interest to be paid by complainant/allottee for delay in making payments:** The definition of term 'interest' as defined under section 2(z a) 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:

"(z a) "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. 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.
33. On consideration of the documents available on record and submissions made by the parties regarding contravention as per 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 buyer's agreement executed between the parties on 30.08.2010, the possession of the said unit was to be delivered within a period of 30 months from the date of commencement of construction and it is further provided in agreement that promoter shall be entitled to a grace period of three months for applying and obtaining completion certificate/occupation certificate in respect of said project. 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 be 28.03.2014. In the present case, the complainant was offered possession by the respondent on 20.02.2018 after obtaining occupation certificate dated 25.01.2018 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 annexed but not executed between the parties.
34. 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 25.01.2018. However, the respondent offered the possession of the unit in question to the complainant only on 20.02.2018, 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. 28.03.2014 till the expiry of 2 months from the date of offer of possession (20.02.2018) which comes out to be 20.04.2018.

35. 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. 28.03.2014 till 20.04.2018 as per provisions of section 18(1) of the Act read with rule 15 of the rules. The respondent shall adjust the amount already paid to the complainant towards the delay in handing over of possession.

**G.II Direct the respondent to refund an amount of Rs.16,53,750/- to the complainants against preferential location charges paid by the complainants, in view of the complainants' unit having ceased to be preferentially located;**

**G.III Direct the respondent to refund an amount of Rs.5,12,880/- to the complainants, illegally collected by the respondent against open parking charges, whereas the said charges form part of the basic sale price as per law;**

**G.IV Direct the respondent to refund an amount of Rs.88,500/- to the complainants, illegally collected by the respondent, over and above the onetime amount stipulated in the buyer's agreement against club membership charges;**

**G.V Direct the respondent to pay to the complainants the amount against interest accrued till date on the IBMS deposit made by the complainants;**

- G.VI Direct the respondent to refund an amount of Rs.4,48,043/- to the complainants on account of service tax, illegally collected by the respondent;**
- G.VII Direct the respondent to refund an amount of Rs.1,10,425/- to the complainants on account of GST, illegally collected by the respondent;**
- G.VIII Direct the respondent to refund an amount of Rs.52,500/ to the complainants on account of excess registration charges, illegally collected by the respondent.**
36. 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.
37. 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.
38. Moreover, the clause 11 of the conveyance deed dated 08.01.2019 is also relevant and reproduced hereunder for ready reference:
- 11. 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.*
39. 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**

40. 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 is directed to pay the interest at the prescribed rate i.e. 11.10 % per annum for every month of delay on the amount paid by the complainant from the due date of possession i.e., 28.03.2014 till 20.04.2018 i.e. expiry of 2 months from the date of offer of possession (20.02.2018). 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.
41. Complaint as well as applications, if any, stands disposed off accordingly.
42. File be consigned to registry.

  
**(Ashok Sangwan)**  
Member

  
**(Vijay Kumar Goyal)**  
Member

  
**(Arun Kumar)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 28.01.2025