

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

Complaint no. : 1480 of 2023
Date of order : 08.01.2025

1. Koushik Samaddar
2. Bhaswati Samaddar
Both R/o: Flat no. 123, Sector-1,
Block-DB-2012, Salt Lake City, Bidhannagar(M),
North 24 Parganas, West Bengal-700064.

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 Bhardwaj (Advocate)
Harshit Batra (Advocate)

Complainants
Respondent

HARERA
GURUGRAM

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

2. 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	Palm Gardens, Sector 83, Gurugram, Haryana
2.	Total area of the project	21.90 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	108 of 2010 dated 18.12.2010
	Validity of license	17.12.2023
	Licensee	Logical Developers Pvt. Ltd. and 2 others
	Area for which license was granted	21.9 acres
5.	HRERA registered/ not registered	Registered vide no.330 of 2017 dated 24.10.2017 (1,2,6,8 to 12 and other facilities and amenities)
	HRERA registration valid up to	31.12.2018
	HRERA extension of registration vide	02 of 2019 dated 02.08.2019
	Extension valid up to	31.12.2019
6.	Unit no.	PGN-09-12A02, Floor-12A, Building no.-09

		(As on page no. 36 of reply)
7.	Area of the unit	1900 sq.ft. [super-area] (As on page no. 36 of reply)
8.	Provisional allotment letter	01.02.2012 (As on page no. 29 of reply)
9.	Buyer's Agreement	14.02.2012 (As on page no. 39 of complaint)
10.	Possession	<p>CLAUSE 10 . POSSESSION</p> <p>(a) Time of handing over the Possession</p> <p><i>Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 36 (Thirty Six) months from the date of start of construction, subject to timely compliance of the provisions of the Buyer's Agreement by the Allottee. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of 3(Three) months, for applying and obtaining the completion certificate/ occupation certificate in respect of the Unit and /or the Project.</i></p> <p>[Emphasis supplied]</p>

		(As on page no. 43 of reply)
11.	Due date of possession	09.11.2015 [Calculated 36 months from date of start of construction i.e., 09.08.2012 plus 3 months] [Note:- Grace period not included]
12.	Payment plan [Note:-Intimation of possession-5%of BASIC, 5% of PLC, 100% of IFMS.]	Instalment plan
13.	Total sale consideration	Rs.1,01,68,913/- (As per S.O.A dated 06.06.2023 on page no. 128 of reply)
14.	Amount paid by the complainant	Rs.1,01,68,916/- (As per S.O.A dated 06.06.2023 on page no. 128 of reply)
15.	Occupation certificate	02.05.2019 (As on page no. 115 of reply)
16.	Offer of possession	06.05.2019 (As on page no. 98 of complaint)
17.	Handover advice letter	22.07.2019 (As on page no. 104 of complaint)
18.	Unit handover letter	07.08.2019 (As on page no. 132 of reply)
19.	Indemnity-cum-undertaking	12.07.2019 (As on page no. 125-127 of reply)
20.	Conveyance deed	21.08.2019 (As on page no. 134 of reply)

B. Facts of the complaint

3. The complainants have made the following submission: -

- I. That the somewhere around mid- 2011, the respondent advertised about its project namely "Palm Gardens" located in Sector-83, Gurgaon. The respondent painted a rosy picture of the project making tall claims and representing that the project aims at providing exclusive luxury homes featuring highest design standards and premium amenities.
- II. That believing the representations of the respondent, the complainants booked a unit in the project. Thereafter, on 14.02.2012, the Buyer's agreement was executed between the parties thereby allotting unit bearing no. PGN-09-12A02 located on 12th floor in building no. 09 admeasuring super area of 1900 sq. ft. in the project.
- III. That as per clause 10(a) of the said Buyer's agreement, the respondent proposed to handover possession of the unit within a period of 36 months from the date of start of construction i.e., 09.08.2012 along with grace period of three months, i.e. by 09.11.2015. However, the respondent failed in handing over possession in accordance with the said agreement.
- IV. That the complainants have paid a total of Rs.1,03,27,827/- towards the aforesaid residential flat in the project from 2011 till date as and when demanded by the respondent, as against the total sale consideration of Rs.1,00,13,170.28/-. Subsequently, the complainants kept making calls and inquiring as to when will the possession be handed over but the respondent's representatives never furnished a concrete answer to the same. The respondent had represented that the project aims at providing 8 acres of lush green area called the 'Central Greens' which shall form the

green view of the unit booked by the complainants. The complainants also levied a sum of Rs.2,85,000/- and Rs.1,90,000/- on account of PLC Charges. However, the project did not seem to comprise of said 8 acre green view.

- V. That the complainants were assured by the respondent that all the necessary sanctions and government approvals have been obtained for the project in question and construction would resume soon. However, despite making payment in accordance with the demands raised by the respondent and upon no information regarding the handover status of the apartment, when the complainants visited the project site again in 2016, they was startled to see that the project construction was nowhere nearing completion. However, the respondent assured that the construction would be carried forward in full swing and project will be complete soon. Having deposited a substantial amount with the respondent, the complainants had no option but to believe the representations made by the respondent.
- VI. That on 06.05.2019 after a delay of more than 4 years, the complainants received an Offer of possession for the unit in question thereby informing that the unit is ready for possession and calling upon the complainants to make the final payment. However, upon visit they found out that the unit was far from completion and a lot of work was yet to be done. Accordingly, on 22.07.2019, the respondent issued a Handover advice letter informing that the unit was ready for possession and the same could be taken.
- VII. That upon receiving abovesaid letter, the complainants visited the unit and though some irregularities were there apart from the missing green view/8 acre central green area, after having deposited more than the total consideration amount, the complainants had no option but to take

possession of said unit. Accordingly, the complainants took possession of the unit in question.

- VIII. That the respondent highlighted and communicated that it will deliver the unit after completing the specifications and building/site layouts as mentioned in the Brochure, Buyer's Agreement, Building/site layout plans etc. within 39 months of start of construction work but there was an inordinate delay in handing over the possession of the unit.
- IX. That the respondent has failed to adhere to the representations made by it and retained the hard earned money paid by the complainants for so many years thereby causing wrongful loss to the complainants and wrongful gain to the respondent.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- Direct the respondent to pay delayed possession charges from the due date of handing over possession till actual handing over possession at the prescribed rate of interest.
 - Direct the respondent to charge delay payment charges, if any, at equitable rate of interest.
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: -
- That the complainants approached the respondent and expressed interest in the booking an apartment in the Group Housing Colony developed by the respondent known as "Palm Gardens" situated in Sector 83, Village Kherki Daula, Haryana. Prior to the booking, the complainant

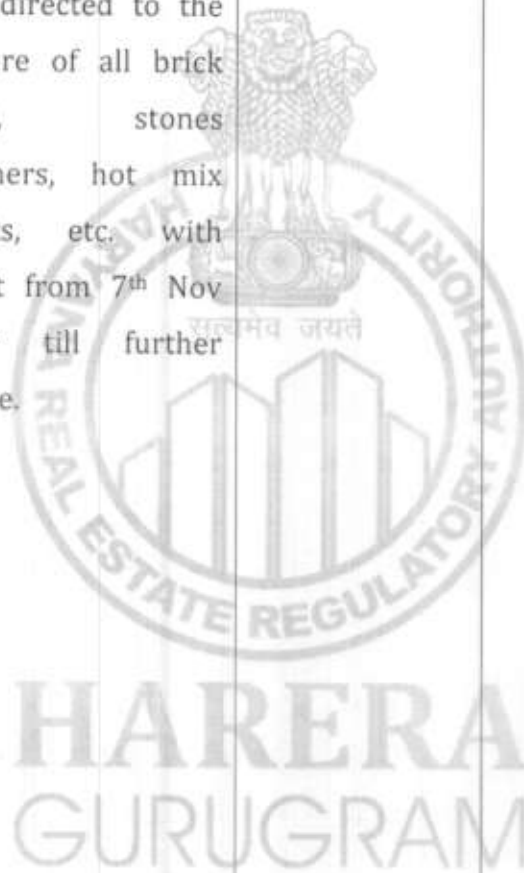
- conducted extensive and independent enquiries with regard to the project took an independent and informed decision to book the unit in question.
- II. That pursuant thereto, unit bearing no PGN-09-12A02, located in Tower 09, 12th Floor admeasuring 1900 sq. ft. (tentative area) was allotted vide provisional allotment letter dated 01.02.2012.
 - III. Thereafter, the Buyer's Agreement dated 14.02.2012 was executed between the original allottees and the respondent. As per clause 10(a) of the Buyer's Agreement, the due date of possession was subject to the allottees having complied with all the terms and conditions of the Buyer's Agreement.
 - IV. That the remittance of all amounts due and payable by the complainant under the Buyer's Agreement as per the schedule of payment incorporated in the Buyer's Agreement was of the essence. That the date for delivery of possession of the unit would stand extended in the event of the occurrence of the facts/reasons beyond the power and control of the respondent.
 - V. That it is submitted that the complainants had defaulted/delayed in making the due payments, upon which reminders were also served to the original allottees as well as the complainants, both of whom had paid delayed payment interest at multiple occasions. That the *bonafide* of the respondent is also essential to be highlighted at this instance, who had served a number of request letters and demand notes to the complainants to ensure that the payments are made in a timely manner.
 - VI. Furthermore, the delivery of possession was also subject to the *force majeure* circumstances. It is to be noted that the development and implementation of the project have been hindered on account of several orders/directions passed by various authorities/forums/courts, before

passing of the subjective due date of offer of possession. They have been delineated hereinbelow:

S. no.	Date of Order	Directions	Period of Restriction	Days affected	Comments
1.	07.04.2015	National Green Tribunal had directed that old diesel vehicles (heavy or light) more than 10 years old would not be permitted to ply on the roads of NCR, Delhi. It has further been directed by virtue of the aforesaid order that all the registration authorities in the State of Haryana, UP and NCT Delhi would not register any diesel vehicles more than 10 years old and would also file the list of vehicles before the tribunal and provide the same to the police and other concerned	7 th of April, 2015 to 6 th of May, 2015	30 days	The aforesaid ban affected the supply of raw materials as most of the contractors/building material suppliers used diesel vehicles more than 10 years old. The order had abruptly stopped movement of diesel vehicles more than 10 years old which are commonly used in construction activity. The order had completely hampered the construction activity.

		authorities.			
2.	19th July 2016	National Green Tribunal in O.A. No. 479/2016 had directed that no stone crushers be permitted to operate unless they operate consent from the State Pollution Control Board, no objection from the concerned authorities and have the Environment Clearance from the competent Authority.	Till date the order in force and no relaxation has been given to this effect.	30 days	The directions of NGT were a big blow to the real estate sector as the construction activity majorly requires gravel produced from the stone crushers. The reduced supply of gravels directly affected the supply and price of ready mix concrete required for construction activities.
3.	8th Nov, 2016	National Green Tribunal had directed all brick kilns operating in NCR, Delhi would be prohibited from working for a period of 2016 one week from the date of passing of the order. It had also been directed that no construction activity	8 th Nov, 2016 to 15 th Nov, 2016	7 days	The bar imposed by Tribunal was absolute. The order had completely stopped construction activity.

		would be permitted for a period of one week from the date of order.			
4.	7 th Nov, 2017	Environment Pollution (Prevention and Control Authority) had directed to the closure of all brick kilns, stones crushers, hot mix plants, etc. with effect from 7 th Nov 2017 till further notice.	Till date the order has not been vacated	90 days	The bar for the closure of stone crushers simply put an end to the construction activity as in the absence of crushed stones and bricks carrying on of construction were simply not feasible. The respondent eventually ended up locating alternatives with the intent of expeditiously concluding construction activities but the previous period of 90 days was consumed in doing so. The said period ought to be excluded while



					computing the alleged delay attributed to the Respondent by the Complainants. It is pertinent to mention that the aforesaid bar stands in force regarding brick kilns till date is evident from orders dated 21 st Dec, 19 and 30 th Jan, 20.
5.	9 th Nov 2017 and 17 th Nov, 2017	National Green Tribunal has passed the said order dated 9 th Nov, 2017 completely prohibiting the carrying on of construction by any person, private, or government authority in NCR till the next date of hearing. (17 th of Nov, 2017). By virtue of the said order, NGT had only permitted the competition of	The order dated 9 th Nov, 17 was vacated vide order dated 17 th Nov, 17.	9 days	On account of passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.

		interior finishing/interior work of projects.			
			Total days	166 days	

- VII. That the respondent applied for the Occupation Certificate in respect of the said unit on 21.12.2018 and the same was issued on 02.05.2019. No fault or lapse can be attributed to the respondent in the facts and circumstances of the case. Therefore, the time period utilized by the statutory authority to grant occupation certificate to the respondent is necessarily required to be excluded from computation of the time period utilized for implementation and development of the project.
- VIII. That the respondent earnestly requested the complainants to obtain possession of the unit in question and further requested the complainants to execute a conveyance deed in respect of the unit in question after completing all the formalities regarding delivery of possession. That on 02.05.2019, i.e., before offering the possession of the unit, the respondent had also credited delay compensation of Rs.5,95,338/-.
- IX. That thereafter, the possession of the unit was taken by the complainants on 07.08.2019 after duly verifying the site and unit and being completely satisfied with the same. Consequently, the conveyance deed was executed on 21.08.2019. It was specifically and expressly agreed that the liabilities and obligations of the respondent as enumerated in the allotment letter or the Buyer's Agreement stand satisfied.
- X. That in accordance with the facts and circumstances noted above, the present claim is barred by limitation. That after the receipt of the

occupation certificate, there remains no delay in the project. The contractual relationship between the parties has come to an end after the execution of the Conveyance Deed and payment of delay possession charges to the complete satisfaction of the complainant.

- XI. That as noted above, on 02.05.2019, the respondent had also credited delay compensation of Rs.5,95,338/- and the same was duly accepted by the complainant. That moreover, 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.
 - XII. That the respondent has also credited early payment rebate of Rs.32,499/- and without accepting the contents of the complaint in any manner whatsoever, and without prejudice to the rights of the respondent, delayed interest if any has to be calculated only on the amounts deposited by the complainants towards the basic principal amount of the unit in question and not on any amount credited by the respondent, or any payment made by the complainants towards delayed payment charges (DPC) or any taxes/statutory payments, etc.
 - XIII. That in light of the *bona fide* conduct of the respondent, no delay for the complainants, the peaceful possession having been taken by the complainants, non-existence of cause of action, claim being barred by limitation and the frivolous complaint filed by the complainants, this complaint is bound be dismissed with costs in favor of the respondent
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 21.08.2019 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 complainants are 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. 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.
20. 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.
21. In the present matter the cause of action arose on 06.05.2019 when the offer of possession was made by the respondent. The complainants have filed the present complaint on 28.03.2023 which is 3 years 10 months and 22 days from the date of cause of action. In the present case the period of delay in filing of the case needs to be calculated after taking into account the exclusion period from 15.03.2020 to 28.02.2022. 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. Objections regarding force majeure circumstances.

22. 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, shortage of labour 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 from the due date of handing over possession till actual handing over possession at the prescribed rate of interest.

23. 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)*

24. Clause 10(a) of the Buyer’s Agreement (in short, the agreement) dated 14.02.2012 provides for handing over possession and the same is reproduced below:

10(a) Time of handing over the Possession

“Subject to terms of this clause and barring force majeure conditions, and subject to the Allottee having complied with all the terms and conditions of this Buyer’s Agreement, and not being in default under any of the provisions of this Buyer’s Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Unit **within 36 (Thirty Six) months from the date of start of construction**, subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the Company shall be entitled to a **grace period of 3(three) months**, for applying and obtaining the completion certificate/occupation certificate in respect of the unit and/or the Project.

[Emphasis supplied]

25. The Buyer’s agreement was executed on 14.02.2012. As per clause 10 (a) of the agreement, the respondent was to offer the possession of the unit to the allottees within 36 months from the date of start of construction. The date of start of construction as per the Statement of Accounts as on 06.06.2023 at page no. 128 of complaint is 09.08.2012. Thus, the Authority have calculated 36 months from the date of start of construction, also the grace period of 3 months is allowed to the respondent/promoter. Therefore, the due date comes out to be 09.11.2015.

26. **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.

27. 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.
28. 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., 08.01.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
29. 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;"*
30. 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 14.02.2012 between the complainants and the respondent. The possession of the subject unit was to be offered within a period of 36 months plus 3 months from date of commencement of construction. The Authority calculated due date of possession from the date of start of construction i.e., 09.08.2012 along with a grace period of 3 months which comes out to be 09.11.2015. The respondent has failed to handover possession of the subject unit on the due date.

31. 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 14.02.2015 executed between the parties. Further, the Authority observes that the respondent obtained the occupation certificate on 02.05.2019 and offered possession to the complainants on 06.05.2019 and the conveyance deed was executed on 21.08.2019.
32. In the reply, the respondent have made a submission that as per the Statement of account dated 06.06.2023 annexed at page no. 128 of reply, the respondent has credited delay compensation amounting to Rs.5,95,338/- and the same is reflected in the Statement of account at entry no.68.
33. 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. 09.11.2015 till the date of offer of possession plus two months after obtaining the occupation

certificate, as per section 18(1) of the Act of 2016 read with rule 15 of the rules after deducting the amount already paid by the respondent to the complainants on account of delayed possession charges, if any.

G.II. Direct the respondent to charge delay payment charges, if any, at the equitable rate of interest.

34. The financial liabilities between the allottee and the promoter comes to an end after the execution of the conveyance deed. The complainants could have asked for the claim before the conveyance deed got executed between the parties. Therefore, after execution of the conveyance deed the complainants-allottees cannot seek 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: -

35. 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: -

- i. 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., 09.11.2015 till the date of offer of possession plus 2 months 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.

ii. 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,

36. Complaint stands disposed of.
37. File be consigned to the registry

Dated: 08.01.2025

(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram



HARERA
GURUGRAM