

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

Complaint no.: 2488 of 2023
Date of first hearing: 26.10.2023
Date of Order: 16.01.2025

1. Deepender Gautam
2. Vandna Sharma

Complainants

R/o: - A-12, Second Floor, Indraprasth
Society, Sonapat Road, Rohtak-124001.

Versus

M/s Emaar MGF Land Limited
Regd. Office: - ECE House, 28, Kasturba
Gandhi Marg, New Delhi-110001

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Jagdeep Kumar (Advocate)
Shri Dhruv Rohatgi (Advocate)

Complainants
Respondent

ORDER

1. This 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 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	Gurgaon Greens, Sector 102, Gurugram, Haryana
2.	Project Area	13.531 acres
3.	Nature of project	Group Housing Colony
4.	DTCP license no. and validity	75 of 2012 dated 31.07.2012 valid up to 30.07.2020
5.	Name of licensee	Kamdhenu Projects Pvt. Ltd. and another
6.	Unit no.	GGN-01-0602, 6 th floor, building no. 01. (As per page no. 28 of the complaint)
7.	Unit admeasuring	1650 sq. ft. (As per page no. 28 of the complaint)
8.	Provisional allotment letter dated in favour of original allottee i.e., Mr. Syed Husain Tahir	28.01.2013 (As per page no. 43 of the reply)
9.	Date of execution of buyer's agreement in favour of original allottee i.e., Mr. Syed Husain Tahir	12.06.2013 (As per page no. 25 of the complaint)
10.	Date of nomination letter	03.04.2014 (As per page no. 76 of the complaint)
11.	Possession clause	14. POSSESSION (a) Time of handing over the possession <i>Subject to terms of this clause and barring force majeure conditions, and subject to the Allottee(s) having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 36</i>

		<p>(Thirty Six) months from the date of start of construction; subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the Company shall be entitled to a grace period of 5 (five) for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project. (Emphasis supplied) (As per page no. 41 of the complaint)</p>
12.	Date of start of construction	28.06.2013 (As per page no. 150 of the reply)
13.	Due date of possession	28.11.2016 (Note: Due date to be calculated 36 months from the date of start of construction plus 5 months grace period) [Note: - Grace period is allowed]
14.	Total sale consideration	Rs.1,00,99,992 /- (As per statement of account dated 06.06.2023 on page no. 149 of the reply)
15.	Total amount paid by the complainants	Rs.1,00,99,991/- (As per statement of account dated 06.06.2023 on page no. 150 of the reply)
16.	Occupation certificate	16.07.2019 (As per page no. 153 of the reply)
17.	Offer of possession	19.07.2019 (As per page no. 160 of the reply)
18.	Indemnity-cum-undertaking	19.08.2019 (As per page no. 170 of the reply)
19.	Unit handover letter	30.11.2019 (As per page no. 172 of the reply)
20.	Date of execution of conveyance deed	26.12.2019 (As per page no. 176 of the reply)

B. Facts of the complaint:

3. The complainants have made the following submissions:

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- I. That one Mr. Syed Husain Tahir, R/o 203, Building 3, Albadia Resort, Dubai Festival City, Dubai, United Arab Emirates, was the original allottee of the subject unit bearing flat No. GGN-01-0602 at Gurgaon Greens, Sector 102, Gurugram, having super built-up area of 1650 sq. ft.
- II. That the original allottee and the respondent entered into a builder buyer's agreement on 12.06.2013. Thereafter, complainants purchased the said unit from original allottee *vide* "agreement to sell" and subsequent, endorsement of the buyer's agreement was made in the favour of the complainants on 11.03.2014, making them stepping into the shoes of the original allottee.
- III. That the flat was offered to the original allottee for a total sale consideration exclusive of taxes is Rs.92,51,750/- (which includes the charges towards the basic price of Rs.75,88,350/-, exclusive/dedicated covered car parking of Rs.3,00,000/-, EDC & IDC of Rs.5,70,900/-, club membership of Rs.50,000/-, IFMS of Rs.82,500/-, PLC charges of Rs.1,65,000/- for corner unit and PLC for Central Greens Rs.4,95,000/-). The complainants made a payment of the amount Rs.31,36,754/- to original allottee as paid by him to the respondent (original receipts endorsed in favour of complainants on 11.03.2014) and the rest amount was paid to the respondent as and when demanded.
- IV. That the respondent confirmed nomination of the complainants for the said unit through nomination letter dated 03.04.2014 and endorsement on the buyer's agreement on 11.03.2014.
- V. That on 03.04.2014, the respondent issued a nomination letter in which respondent confirms that the nomination formalities having completed and accordingly now the captioned property stands in

the name of complainants and respondent also confirm having received a total sum of Rs.31,36,754/- which is in line with "agreement to sell" executed between complainants and original allottee. The respondent handover payment receipts and "buyer's agreement" along with "nomination letter" to the complainants. The complainants found buyer's agreement consisting very stringent and biased contractual terms which are illegal, arbitrary, unilateral and discriminatory in nature, because every clause of agreement is drafted in a one-sided way and a single breach of unilateral terms of provisional allotment letter by complainants, will cost him forfeiture of 15% of total consideration value of unit. When complainants opposed the unfair trade practices of respondent about the delay payment charges of 24% they said this is standard rule of company and company will also compensate at the rate of Rs.7.5/- per sq. ft. per month in case of delay in possession of flat by company. The complainants opposed these illegal, arbitrary, unilateral and discriminatory terms of buyer's agreement.

- VI. That after the endorsement was made on the buyer's agreement in favour of the complainants, the complainants with bona-fide intentions continued to make payments on the basis of the demand raised by the respondent. During the period starting from 11.03.2014, the date of endorsement on the buyer's agreement, the respondent raised demands of payments through various demand letter which were duly paid by them. A total of more than Rs.1,01,00,695/- was paid. Thus, showing complete sincerity and interest in project and the said flat.

- VII. That as per Annexure-III (Schedule of Payments) of buyer's agreement the total sale consideration exclusive of ST and GST taxes is Rs.92,51,750/- but later at the time of possession respondent add Rs.30,076/- in sale consideration and increase it to Rs.92,81,826/- without any reason for the same, and the respondent also charge IFMS Rs.82,500/- separately, whereas IFMS Charges already included in sale consideration and that way respondent charge IFMS twice from complainants. In total respondent increased the sale consideration by Rs.1,12,576/- (Rs.30,076/- + Rs.82,500/-) without any reason which is an illegal, arbitrary unilateral and unfair trade practice. The complainants opposed the increase in sales consideration at time of possession but respondent did not pay any attention to complainants.
- VIII. That as per the clause-14 of the said flat buyer's agreement dated 12.06.2013, the respondent had agreed and promise to complete the construction of the said flat and deliver its possession within a period of 36 months with a five months grace period thereon from the date of start of construction i.e., 28.06.2013. However, the respondent has breached the terms of said flat buyer's agreement and failed to fulfil its obligations and has not delivered possession of said flat within the agreed time frame as per the builder buyer's agreement. The proposed possession date as per buyer's agreement was due on 28.06.2016.
- IX. That the complainants have paid the entire sale consideration along with applicable taxes to the respondent for the said flat. As per the statement dated 23.05.2023 issued by the respondent, upon the request of the complainants, the complainants have already paid Rs.1,01,00,695/- towards total sale consideration plus

taxes as on today to the respondent and now nothing is pending to be paid on the part of complainants. Although the respondent charges Rs.1,12,576/- extra on sales price without stating any reason for the same.

- X. That on the date agreed for the delivery of possession of said flat as per date of booking and later on according to the flat buyer's agreement is 28.06.2016, the complainants had approached the respondent and its officers for inquiring the status of delivery of possession but none one bothered to provide any satisfactory answer to the complainants about the completion and delivery said flat. The complainants thereafter kept running from pillar to post asking for the delivery of his home but could not succeed in getting any reliable answer.
- XI. That the conduct on part of respondent regarding delay in delivery of possession of the said flat has clearly manifested that respondent never ever had any intention to deliver the said flat on time as agreed. It has also cleared the air on the fact that all the promises made by the respondent at the time of sale of involved flat were fake and false. The respondent had made all those false, fake, wrongful and fraudulent promises just to induce the complainants to buy the said flat basis its false and frivolous promises, which the respondent never intended to fulfil. The respondent in its advertisements falsely represented regarding the delivery date of possession and resorted to all kind of unfair trade practices while transacting with the complainants.
- XII. That the offer of possession offered by respondent through "Intimation of Possession" was not a valid offer of possession because respondent offered the possession on dated 19.07.2019

with stringent condition to pay certain amounts which are never be a part of agreement and respondent did not received the completion certificate. At the time of offer of possession builder did not adjusted the penalty for delay possession. In case of delay payment, builder charged the penalty @24% per annum and in delay in possession give the Rs.7.5/- sq. ft. only, this is illegal , arbitrary, unilateral and discriminatory and above all respondent did not even adjust a single penny on account of delay in possession even after a delay of 3 years. The respondent also demanded an indemnity-cum-undertaking along with final payment, which is illegal and unilateral demand. The respondent did not even allow complainants to visit the property at "Gurgaon Greens" before clearing the final demand raised by respondent along with the offer of possession. The respondent demanded two year advance maintenance charges from complainants which was never agreed under the buyer's agreement and respondent also demanded a lien marked FD of Rs.1,35,820/- in pretext of future liability against HVAT which are also a unfair trade practice. The complainants enquired the construction status of rest of project through telephonically but respondent does not want answer any enquiry before getting complete payment against his final demand. The respondent left no other option to complainants but to pay the payment of two years maintenance charges of Rs.1,44,540/- and fixed deposit of Rs.1,35,820/- with a lien marked in favour of Emaar MGF Land Limited, Rs.3,41,960/- towards e-stamp duty and Rs.45,000/- towards registration charges of above said unit in addition to final demand raised by respondent along with the offer of possession. The respondent gave physical handover of aforesaid

property on date 30.11.2019 after receiving all payments on 13.08.2019 from the complainants.

- XIII. The complainants inform respondent on 30.11.2019 that respondent is creating anomaly by not compensating the complainants for delay possession charges at the rate of interest specified in the Act of 2016. The complainants made it clear to respondent that if respondent not compensates the complainants at the same rate of interest then complainants will approach the appropriate forum to get redressal. Whenever complainants enquire about the delay possession charges, the respondent making excuse of getting approval from directors, but till date respondent did not credited the delay possession interest.
- XIV. That the respondent has committed grave deficiency in services by delaying the delivery of possession and false promises made at the time of sale of the said flat which amounts to unfair trade practice which is immoral as well as illegal. The respondent charged PLC of Rs.4,95,000/- in pretext of 8 Acres of Central Park but the actual size of Central Green is below 2 acres of land. The respondent has also criminally misappropriated the money paid by the complainants as sale consideration of said flat by not delivering the unit on agreed timelines. The respondent has also acted fraudulently and arbitrarily by inducing the complainants to buy the said flat basis its false and frivolous promises and representations about the delivery timelines aforesaid housing project. The respondent using sub-standard signage boards all over the flats and lobby area and other common area which made the project look more sub-standard.

- XV. That the cause of action accrued in favour of the complainants and against the respondent on 11.03.2014 when the said flat was purchased by complainants from original allottee and it further arose when respondent failed /neglected to deliver the said flat on proposed delivery date. The cause of action is continuing and is still subsisting on day-to-day basis.
- XVI. That the GST Tax which has come into force on 01.07.2017, it is a fresh tax. The possession of the apartment was supposed to be delivered to complainants on 28.06.2016, therefore, the tax which has come into existence after the due date of possession of flat, this extra cost should not be levied on complainants, since the same would not have fallen on the complainants if the respondent had offer the possession of flat within the time stipulated in the builder buyer's agreement.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- i. Direct the respondent to pay interest at the rate of 18% on account of delay in offering possession on Rs.1,01,00,695/- paid by the complainants as sale consideration of the said flat from the date of payment till the date of delivery of possession;
 - ii. Direct the respondent to return Rs.1,12,576/- unreasonably charged by the respondent by increasing sale price after execution of buyer's agreement between the respondent and complainants.
 - iii. Direct the respondent to return entire amount paid as GST Tax by complainants between 01.07.2017 to 24.07.2019.
 - iv. Direct the respondent to pay an amount of Rs.55,000/- to the complainants as cost of the present litigation.

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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 contested the complaint on the following grounds:
- I. That 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 19.06.2012.
 - II. That the present complaint is not maintainable in law or on facts. The present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint are beyond the purview of this authority and can only be adjudicated by the Civil Court. Therefore, the present complaint deserves to be dismissed on this ground alone.
 - III. That the complainants have not come before this authority with clean hands and has suppressed vital and material facts from this authority. The correct facts are set out in the succeeding paras of the present reply.
 - IV. That the instant complaint is barred by limitation. The complainants have alleged that the respondent was obligated to offer possession of the unit in question by June, 2016 and by way of

the instant complaint sought interest for indemnifying them for the alleged delay in delivery of the unit in question. It is submitted that cause of action, if any, for seeking interest accrued in favour of the complainants in 2016 and consequently the instant complaint is barred by limitation.

- V. That the original allottee had approached the respondent and expressed an interest in booking an apartment in the residential group housing colony developed by the respondent known as "Gurgaon Greens" situated in Sector-102, Village Dhankot, Tehsil & District Gurgaon. Prior to making the booking, the original allottee conducted extensive and independent enquiries with regard to the project and it was only after the original allottee was fully satisfied about all aspects of the project, that he took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question.
- VI. That thereafter the original allottee vide an application form dated 24.01.2012 applied to the respondent for provisional allotment of a unit in the project. The complainants, in pursuance of the aforesaid application form, was allotted an independent unit bearing no GGN-01-0602, Tower-01 admeasuring 1650 sq. ft., in the project vide provisional allotment letter dated 28.01.2013. The original allottee consciously and willfully opted for an installment linked payment plan for remittance of the sale consideration for the unit in question and further represented to the respondent that he shall remit every installment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the original allottee and proceeded to allot the unit in question in his favor. The

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original allottee further undertook to be bound by the terms and conditions of the application form/allotment letter.

- VII. That thereafter, buyer's agreement dated 12.06.2013 was executed between the original allottee and the respondent. It is pertinent to note that the delay in signing the buyer's agreement was solely attributable to the original allottee, who had to be sent numerous reminders for the execution of the buyer's agreement.
- VIII. That in the meanwhile, the original allottee, entered into an agreement to sell with the complainants on 12.03.2014, whereby they transferred all their rights and allotment in favour of the complainants. The complainants had further executed affidavit and an indemnity cum undertaking whereby complainants had consciously and voluntarily declared and affirmed that she would be bound by all the terms and conditions of the provisional allotment in favour of the original allottee. It was further declared by complainants that having been substituted in the place of the original allottee, they are not entitled to any compensation for delay, if any, in delivery of possession of the unit in question or any rebate under a scheme or otherwise or any other discount, by whatever name called, from the respondent. Similarly, the original allottee had also executed an affidavit and indemnity cum undertaking on the same lines. The complainants are conscious and aware of the fact that they are not entitled to any right or claim against respondent.
- IX. That in the manner as aforesaid, the complainants were substituted in the place of the original allottees. Accordingly, the respondent issued the nomination letter on 03.04.2014 in favour or the complainants.

- X. That the original allottee as well as the complainants were irregular in payment of instalments. The respondent was constrained to issue reminders and letters to them requesting them to make payment of demanded amounts. Payment request letters, reminders etc. were 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 payments.
- XI. That the complainants are not "Allottees" but investors who have booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale. The apartment in question has been booked by the complainants as a speculative investment and not for the purpose of self-use as her residence. Therefore, no equity lies in favour of the complainants.
- XII. That it is submitted that even after sending the payment requests letters to the complainants, the complainants gave no heed to the said letters. The complainants consciously and maliciously chose to ignore the letters 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, such as the complainants, 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.
- XIII. That it is respectfully submitted that the rights and obligations of the complainants as well as the respondent are completely and entirely determined by the covenants incorporated in the buyer's

agreement which continues 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 buyer's agreement, and not being in default of the same, possession of the unit would be handed over within 36 months plus grace period of 5 months, from the date of start of construction.

- XIV. That despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. The respondent had applied for occupation certificate on 11.02.2019. Occupation Certificate was thereafter issued by the concerned statutory authority in favour of the respondent dated 16.07.2019.
- XV. That without admitting or acknowledging the truth or legality of the allegations advanced by the complainants and without prejudice to the contentions of the respondent, it is respectfully submitted that the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. It is further submitted that merely because the Act applies to ongoing projects which are registered with the authority, the Act cannot be said to be operating retrospectively. 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 interest is compensatory in nature and cannot be granted in derogation and ignorance of the provisions of the buyer's agreement. It is further submitted that the interest for the alleged delay demanded by the complainants is beyond the

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scope of the buyer's agreement. The complainants cannot demand any interest or compensation beyond the terms and conditions incorporated in the buyer's agreement.

- XVI. That without prejudice to the contentions of the respondent, it is submitted that the allegations of the complainants that possession was to be delivered by June, 2016 are wrong, malafide and result of afterthought in view of the fact that the complainants had made several payments to respondent even after June, 2016. In fact, the last payment was received from the complainants in June, 2019. It is submitted that if there was a delay in delivery of project as alleged by the complainants, then the complainants would not have remitted instalments after June, 2016. The allegations put forth by the complainants qua the respondent are absolutely illogical, irrational and irreconcilable in the facts and circumstances of the case. It is further reiterated that the alleged due date of proposed handover of possession is misconceived.
- XVII. That the complainants were offered possession of the unit in question through letter of offer of possession dated 19.07.2019 and an indemnity cum undertaking for possession dated 19.08.2019 was also executed by the complainants. 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. However, the complainants approached the respondent with request for payment of compensation for the alleged delay in utter disregard of the terms and conditions of the buyer's agreement.
- XVIII. That the complainants approached the respondent requesting it to deliver the possession of the unit in question. A unit handover

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letter dated 30.11.2019 was executed by the complainants, specifically and expressly agreeing that the liabilities and obligations of the respondent as enumerated in the allotment letter or the buyer's agreement stand satisfied. The complainants have intentionally distorted the real and true facts in order to generate an impression that the respondent has reneged from its commitments. No cause of action has arisen or subsists in favour of the complainants to institute or prosecute the instant complaint. The complainants have preferred the instant complaint on absolutely false and extraneous grounds in order to needlessly victimise and harass the respondent.

- XIX. That after execution of the unit handover letter dated 30.11.2019 and obtaining of possession of the unit in question, the complainants is left with no right, entitlement or claim against the respondent. It needs to be highlighted that the complainants have further executed a conveyance deed dated 26.12.2019 in respect of the unit in question. The transaction between the complainants and the respondent stands concluded and no right or liability can be asserted by the respondent or the complainants against the other. That in addition thereto, the complainants have admitted their obligation to discharge her HVAT liability thereunder. It is pertinent to take into reckoning that the complainants have obtained possession of the unit in question and has executed conveyance deed in respect thereof, after receipt of the amount of compensation for delay in possession from the respondent. The instant complaint is a gross misuse of process of law. The contentions advanced by the complainants in the false and frivolous complaint are barred by estoppel.

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- XX. That several allottees, including the complainants, have defaulted in timely remittance of payment of installments which was an essential, crucial and an indispensable requirement for conceptualisation and development of the project in question. 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 whereas enormous business losses befall upon the respondent. The respondent, despite default of several allottees, has diligently and earnestly pursued the development of the project in question and has constructed the project in question as expeditiously as possible. It is submitted that the construction of the tower in which the unit in question is situated is complete and the respondent has already offered possession of the unit in question to the complainants. Therefore, there is no default or lapse on the part of the respondent and there is no equity in favour of the complainants. 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. 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 submissions made by the parties.

E. Jurisdiction of the Authority:

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

E.I Territorial Jurisdiction

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

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;

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.

9. 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 leaving aside compensation which is to

be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondent:

F.I Objection regarding the complaint being barred by estoppel.

10. The respondent has raised an objection that the instant complaint is barred by estoppel as upon execution of conveyance deed dated 26.12.2019, the complainants are now estopped from raising these belated claims/demands as they themselves had acknowledged and accepted that *"that the vendee undertakes that the vendee shall, before taking possession of the said apartment or at any time, thereafter, have no objection to the vendors constructing or continuing with the construction of the other building(s) adjoining to or otherwise (including the addition of structures in the said complex) in the site earmarked for the said complex. The vendee confirms that the vendee shall not raise any objection or make any claims on account of inconvenience, if any, which may be alleged to be suffered by the vendee due to such developmental/construction or its incidental/related activities."*
11. The Authority observed that though the conveyance deed has been executed on 26.12.2019 but as per proviso to section 18 of the Act of 2016, if the 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. In the present complaint, as per the possession clause of the buyer's agreement, the due date of possession of the unit was 28.11.2016 but the same was offered on 19.07.2019 after a delay of 2 years and 8 months. Therefore, the complainants are entitled for delay possession charges for the delayed period as statutory right of the complainants-allottee as per the provisions of section 18 of the Act of 2016. Thus, in

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view of the agreed terms and conditions duly agreed between the parties and the provisions of the Act of 2016, the contention of the respondent stands rejected.

F.II Objection regarding the complainants being investors.

12. The respondent took a stand that the complainants are investors and not consumers and therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement, it is revealed that the complainants are buyers and they have paid a total price of Rs.1,00,99,991/- to the promoter towards purchase of a unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

13. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainants, it is crystal clear that the complainants are allottees as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred to in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus,

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the contention of the promoter that the allottee being investor is not entitled to protection of this Act also stands rejected.

F.III Objection regarding the complaint barred by Limitation Act, 1963

14. Another contention of the respondent is that the complaint is barred by limitation as the due date of possession as per the agreement was 28.11.2016 and the complainants has failed to exercise their rights within the prescribed timeframe. The Authority observes that although the cause of action to file the present complaint accrues on 28.11.2016 i.e. the date of handing over of possession as stipulated under the terms and conditions of the agreement but it is a settled situation now that after due date of possession of the unit, the cause of action is continuing till such obligation of offering the possession of the unit is fulfilled by the promoter-builder. In the present case, the subject unit was offered to the complainants on 19.07.2019. Thus, it was after date of such offer of possession when time for limitation starts tickling. Further, in view of Covid-19, Hon'ble Apex Court vide order dated 10.01.2022 in suo-moto W.P. (C) No. 3 of 2020 has declared period from 15.03.2020 to 28.02.2022 as zero period. Further, as per the scheme of calculating the remaining limitation as provided in the order of Hon'ble Supreme Court, the present complaint which was filed on 05.06.2023 is well within the limitation. Thus, the contention of promoter that the complaint is time barred by proviso of Limitation Act stands rejected.

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

15. Another contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the booking application form executed between the parties and no agreement for sale as referred to under the

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provisions of the Act or the said rules has been executed *inter se* parties. 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 **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)** decided on 06.12.2017 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."

16. Also, in appeal no. 173 of 2019 titled as **Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order 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."

17. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer 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 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 any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

G. Findings on the relief sought by the complainants:

- G.I Direct the respondent to pay interest at the rate of 18% on account of delay in offering possession on Rs.1,01,00,695/- paid by the complainants as sale consideration of the said flat from the date of payment till the date of delivery of possession.**
18. In the present complaint, the complainants intends to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

*.....
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

19. Clause 14(a) of buyer's agreement dated 12.06.2013 provides for handing over of possession and is reproduced below:

14(a). POSSESSION

(a) Time of handing over the Possession

*Subject to terms of this clause and barring force majeure conditions, and subject to the Allottee(s) having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the Unit **within 36 (Thirty Six) months from the date of start of construction**; subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the Company shall be **entitled to a grace period of 5 (five) for applying and obtaining the completion certificate/occupation certificate** in respect of the Unit and/or the Project.*

(Emphasis supplied)

20. The Authority has gone through the possession clause of the agreement and observes that the respondent-developer proposes to handover the possession of the allotted unit within a period of 36 months from the date of start of construction and stipulates grace period of 5 months for the purpose of applying and obtaining the OC/CC. Date of start of construction is 28.06.2013, as such without considering the admissibility/ rejection of the grace period, date of handing over of possession comes out to be 28.06.2016. Another issue for consideration before authority if regarding admissibility of the grace period as stipulated in the above clause of the agreement.
21. The grace period of five months as per the provisions of agreement between the parties is allowed in terms of judgment dated 08.05.2023 of the Hon'ble Appellate Tribunal in **Appeal No. 433 of 2022 tilted as Emaar MGF Land Limited Vs Babia Tiwari and Yogesh Tiwari** wherein it has been held that if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation

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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."

22. 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 28.11.2016 including grace period of 90 days.
23. **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.

24. 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.
25. 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., 16.01.2025 is @ 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
26. 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;"*

27. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11.10% by the

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respondent/promoter which is the same as is being granted to them in case of delayed possession charges.

28. The complainants in the present complaint are subsequent allottees and had purchased the apartment in question from the original allottees and thereafter, the respondent had acknowledged the same vide nomination letter dated 03.04.2014, i.e. before due date of handing over of possession which is 28.11.2016. Thus, the complainants stepped into the shoes of the original allottees before due date of possession. In terms of the order passed by the authority in complaint titled as **Varun Gupta Versus Emaar MGF Land Ltd. (CR/4031/2019)**, the complainants are entitled to delayed possession charges w.e.f. the due date of possession i.e., 23.01.2016 as the complainants stepped into the shoes of the original allottees before the due date of possession.
29. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. The due date of handing over possession is 28.11.2016 but the offer of possession was made on 19.07.2019 after obtaining occupation certificate. Moreover, after such offer of possession by the respondent-builder, possession has been taken over by the complainants on 30.11.2019 as evident from unit handover letter and further, conveyance deed has also been executed on 26.12.2019. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the allottees shall be paid, by the promoter, interest for every month of delay from the due date of possession i.e., 28.11.2016 till offer of possession (which is 19.07.2019)

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after obtaining occupation certificate plus two months i.e., 19.09.2019 or till actual taking over of possession i.e., 30.11.2019, whichever is earlier, at prescribed rate i.e., 11.10 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules. Offer of possession plus two months which comes out to be 19.09.2019 is the earlier date. Thus, the complainants are entitled for delayed possession charges from 28.11.2016 till 19.09.2019.

G.II Direct the respondent to return Rs.1,12,576/- unreasonably charged by the respondent by increasing sale price after execution of buyer's agreement between the respondent and complainants.

G.III Direct the respondent to return entire amount paid as GST Tax by complainants between 01.07.2017 to 24.07.2019.

30. The above mentioned relief sought by the complainants are being taken as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
31. In the above mentioned relief sought by the complainants the financial liabilities between the allottees 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.
32. Moreover, the clause 13 of the conveyance deed dated 26.12.2019 is also relevant and reproduced hereunder for ready reference:

13. That the actual, physical, vacant possession of the said apartment has been handed over to the vendee and the vendee hereby confirms taking over possession of the said apartment/parking space(s) from the vendors after satisfying himself/herself that the construction as also the various installations like electrification work, sanitary fittings, water and sewerage connection etc. have been made and provided in accordance with the drawings, designs and specifications as agreed and are in good order and condition and that the Vendee is fully satisfied in this regard and has no complaint or claim in respect of the area of the said Apartment, any item of work, material, quality of work, installation, compensation for delay, if any, with respect to the said apartment, etc., therein.

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33. The counsel for the respondent vide proceedings of the day dated 14.11.2024 brought to the notice of the Authority that the Authority has decided the similar issues in complaint no. **6322 of 2022 titled as Neeru Sharma Vs Emaar MGF Land Limited** vide order dated 01.10.2024, wherein it was held that after execution of conveyance deed, the complainants-allottee cannot seek refund of charges other than statutory benefits if any pending and in present complaint the conveyance deed got executed on 26.12.2019. Thus, no directions in this regard can be effectuated at this belated stage.

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

34. The complainants are seeking relief w.r.t. compensation in the above-mentioned reliefs. The Hon'ble Supreme Court of India in **civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.**, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

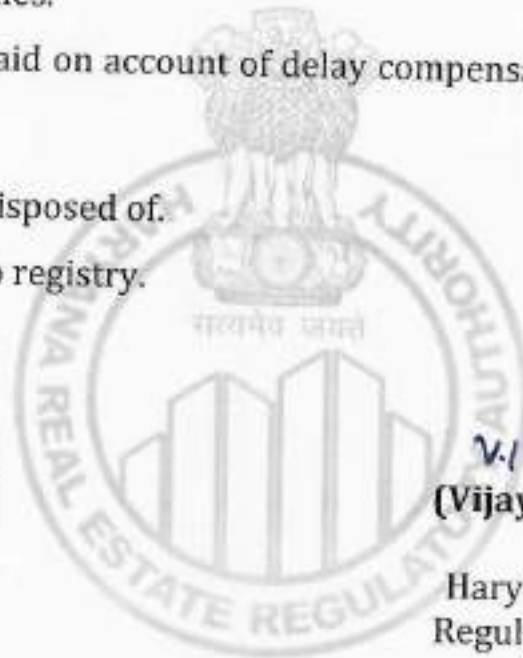
H. Directions of the authority:

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

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- i. The respondent is directed to pay interest at the prescribed rate i.e. 11.10% p.a. for every month of delay on the amount paid by the complainants from the due date of possession i.e., 28.11.2016 till offer of possession plus 2 months or handing over of possession, whichever is earlier, is up to 19.09.2019 only. .
 - ii. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per rule 16(2) of the rules.
 - iii. The amount paid on account of delay compensation, if any shall be adjusted.
36. Complaint stands disposed of.
37. File be consigned to registry.

Dated: 16.01.2025



V. I. Goyal
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM