

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

Complaint no.: 7606 of 2022
Date of first hearing: 27.04.2023
Date of order: 16.01.2025

1. Anita Pal

2. Nitin Pal

Complainants

Both R/o: - EFP-II-49-502 Emerald Floors
Premier, Sector-65, Gurugram-122018

Versus

Emaar MGF Land Ltd. presently known as
Emaar India Ltd.

Respondent

Regd. office at: Emaar MGF Business Park,
Mehrauli Gurgaon Road, Sikandarpur
Chowk, Sector-28 Gurugram-122002

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Varun Chugh (Advocate)

Shri Harshit Batra (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. Project and unit related details

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

S. No.	Particulars	Details
1.	Name of the project	"Emerald Hills Floors", Phase -II, Sector 65, Gurugram, Haryana
2.	Nature of project	Residential
3.	DTCP License no.	i. 10 of 2009 dated 21.05.2009 valid up to 20.05.2019 ii. 113 of 2011 dated 22.12.2011 valid up to 20.12.2024
4.	RERA registration	60 of 2023 dated 08.05.2023 valid up to 10.08.2027
5.	Unit no.	EFP-II-49-0502, Tower-Amber, 2 nd floor (As per page no. 17 of the complaint)
6.	Unit area	1600 sq. ft. (Super Area) (As on page no. 19 of the complaint)
7.	Date of execution of buyer's agreement	05.10.2010 (As per page no. 17 of the complaint)
8.	Nomination letter	30.12.2019 (As per page no. 55 of the complaint)
9.	Possession clause	11. POSSESSION (i) Time of handing over the Possession <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 months from the date of execution of this buyer's agreement. The</i>

		<p><i>Allottee(s) agrees and understands that the Company shall be entitled to a grace period of three months, for applying and obtaining the occupation certificate in respect of the floor and/or the project.</i></p> <p style="text-align: right;">(Emphasis supplied)</p> <p>(As on page no. 32 of the complaint)</p>
10.	Due date of possession	05.01.2014 (Note: Due date to be calculated 36 months from the date of execution of buyer's agreement dated 05.10.2010 plus grace period of 3 months)
11.	Total sale consideration	Rs.82,26,000/- (As per schedule of payments on page no. 51 of the complaint)
12.	Amount paid by the complainants	Rs.89,51,467/- (As per SOA on page no. 58 of the complaint)
13.	Occupation certificate	11.11.2020 (As per page no. 150 of the reply)
14.	Offer of possession	17.11.2020 (As per page no. 53 of the complaint)
15.	Conveyance deed	26.10.2021 (As per page no. 65 of the complaint)
16.	Indemnity cum undertaking	12.12.2020 (As per page no. 160 of the reply)
17.	Unit handover letter	20.03.2021 (As on page no. 165 of the reply)

B. Facts of the complaint:

3. The complainants have made the following submissions in the complaint:
 - I. That initially, the property in question i.e., floor bearing no. EFP-II-49-502 (Fifth Floor) admeasuring 1600 sq. ft. in the project of the respondent i.e., Emaar India Limited, known as "Emerald Floors Premier-II" situated at Sector-65, Gurugram was booked by Ms. Reema Malilk.



- II. That thereafter, on 05.10.2010, the above-named person entered into a builder buyer's agreement with the respondent, by virtue of which the respondent allotted the afore-mentioned unit along-with car parking space to her.
- III. That subsequent thereto, in 2019, the above-named person sold the property in question to the complainants herein had purchased the said property (Floor) and the property was later assigned to the complainants by virtue of the assignment letter dated 30.12.2019.
- IV. That, in the said buyer's agreement dated 17.03.2010, the respondent had categorically stated that the possession of the said floor would be handed over within 36 months from the date of signing of the builder buyer's agreement, with a further grace period of another 3 months. Moreover, at the time of transferring the floor in question, the complainants were further coerced by the respondent to sign affidavits/indemnity-cum-undertaking, in favour of the respondent wherein the complainants were required to undertake, not to claim or raise any compensation delay in handing over possession of the property.
- V. That, the said buyer's agreement and the indemnity cum undertaking are totally one sided, which impose completely biased terms and conditions upon the complainants, thereby tilting the balance of power in favour of the respondent, which is further manifested from the fact that the delay in handing over the possession by the respondent would attract only a meagre penalty of Rs.5/- per sq. ft. on the super area of the flat, on monthly basis, whereas the penalty for failure to take possession would attract holding charges of Rs.50/- per sq. ft. and 24% penal interest per

annum compounded quarterly on the unpaid amount of instalment due to the respondent.

- VI. That the floors were sold by representing that the same will be luxurious ones however all such representations seem to have been made in order to lure complainants to purchase the floor at extremely high prices. There are various deviations from the initial representations.
- VII. That the respondent has breached the fundamental term of the contract by inordinately delaying in delivery of the possession by 84 months. It is pertinent to mention here that the possession of the property in question was finally offered on 17.11.2020.
- VIII. That the complainants without any default, had been timely paying the instalments towards the property, as and when demanded by the respondent towards the aforesaid residential floor in the project and after making the balance payment which was to be made at the time of offering of possession, got the property transferred in their name on 26.10.2021.
- IX. That the respondent had promised to complete the project by November 2013, excluding the grace period of three months. The respondent has breached the fundamental term of the contract by inordinately delaying in delivery of the possession and not providing adequate compensation in line with the provisions of the Act of 2016. In fact, the respondent has even failed to provide compensation as per the terms of the builder buyer's agreement for the entire period of delay in handing over the possession of the unit.
- X. That the respondent has not acknowledged the requests of the complainants in regard to the delayed compensation. In fact, the

promised amenities are missing. The complainants were made to make advance deposit on the basis of information contained in the brochure which is false on the face of it.

- XI. That the respondent has committed various acts of omission and commission by making incorrect and false statement in the advertisement material as well as by committing other serious acts as mentioned in preceding paragraph. The project has been inordinately delayed. The respondent has resorted to misrepresentation. The complainants therefore, seek direction to the respondent to pay interest @ 18% p.a. as payment, towards delay in handing over the property in question.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- Direct the respondent to pay the interest @ 18% p.a. as payment, towards delay in handing over the property in question as per provisions of the Act of 2016 and Rules, 2017;
 - Direct the respondent to pay a sum of Rs.50,000/- to the complainants towards the cost of the litigation.
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 at the very outset, it is submitted that the instant complaint is untenable both in facts and in law and is liable to be rejected on this ground alone.

- II. That the complainants are estopped by their own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint.
- III. That the complainants have not approached the Hon'ble Authority with clean hands. That the complainants enjoy complete title over the unit and have been in peaceful possession of the unit since over two years. That approaching this forum with half-cooked and manipulated stories is a grave violation of the doctrine of clean hands and hence, this complaint is liable to be dismissed on this ground alone.
- IV. That the complainants have 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 05.10.2010 which was subsequently endorsed in favor of the complainants vide nomination letter dated 30.12.2019.
- V. That the original allottee, Ms. Reema Malik being interested in the real estate development of the respondent, a group housing colony known as "Emerald Floors Premier" situated at Emerald Estate applied for provisional allotment via application form and were consequently allotted unit no. EFP-II-49-0502 vide provisional allotment letter dated 13.07.2010.
- VI. That thereafter, the buyer's agreement was executed on 05.10.2010 with the original allottee. Thereafter, the original allottee transferred the unit to the subsequent purchasers, namely, Anita Pal and Nitin Pal, i.e., the complainants. That having done so, the original allottee and the complainants requested for the transfer/assignment

of the unit to the complainants. That at this stage, it is pertinent to note that vide the assignment request made by the complainants, the timelines for offering the possession were amended and stood changed to "July 2020". At this instance, it is also stated that the complainants had concealed the said material fact and hence, has approached the Authority with unclean hands and hence, the present complaint should be dismissed on this ground alone.

- VII. That acceding to the same, the erstwhile allottees and the complainants have executed affidavits and undertakings in this regard on 17.12.2019 and thereafter, the complainants' nomination was confirmed on 30.12.2019.
- VIII. That at the time of the assignment of the complainants, the due date of offer of possession as per clause 11(a) of the agreement already stood expired and the complainants were in complete knowledge of the delay in the completion of the project due to the extreme *force majeure* circumstances faced by the respondent, all of which were duly explained to the complainants. It was only thereafter that the due date was accordingly amended to July 2020.
- IX. That despite all the unforeseen and unavoidable circumstances, the respondent did not default and instead completed the construction of the project without having regular payment of monies against the unit. That in case of delays caused in making payments against the unit, the proposed due date of delivery of possession is liable to be further extended. That as is known and practically understood that regular and timely payments by the allottees are pertinent towards the completion of a real estate project, yet, without the same being done in the present case, the respondent has shown an exemplary

conduct as a real estate promoter which should be duly taken into account. Upon the defaults caused in making timely payments after payment request letter dated 07.10.2013, 11.11.2013, 18.04.2017, 19.12.2017, 08.01.2018 and 17.03.2020 several reminders were served dated 31.10.2013, 02.12.2013, 09.05.2017, 04.10.2017, 17.01.2018, 21.02.2018 and 01.05.2018.

- X. The respondent was adversely affected by various construction bans, issue of second staircase, default of contractors, lack of availability of building material, regulation of the construction and development activities by the judicial authorities including NGT in NCR on account of the environmental conditions, restrictions on usage of ground water by the High Court of Punjab & Haryana, demonetization etc. and other force majeure circumstances, yet, the respondent completed the construction of the project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the complainants and demanding the prices only as and when the construction was being done.
- XI. That without admitting or acknowledging in any manner the truth or legality of the allegations levelled by the complainants and without prejudice to the contentions of the respondent, it is submitted that the project has got delayed on account of the above-mentioned reasons which were/are beyond the power and control of the respondent and hence the respondent cannot be held responsible for the same. The respondent had the right to suspend the construction of the project upon happening of circumstances beyond the control of the complainants as per clause 11(b)(i), however, despite all the hardships faced by the respondent, the respondent

did not, suspend the construction and managed to keep the project afloat through all the adversities. Owing to all such reasons which were within the knowledge of the complainants, the due date was amended to July 2020.

- XII. That the respondent has complied with all of its obligations, not only with respect to the buyer's agreement real with amendment of due date, with the complainants but also as per the concerned laws, rules and regulations thereunder and the local authorities. Despite the innumerable hardships being faced by the respondent, the respondent completed the construction of the project and applied for part occupation certificate vide an application dated 20.07.2020 before the concerned Authority and successfully attained the Occupation certificate dated 11.11.2020. It is respectfully submitted that once an application for grant of occupation certificate is submitted to the concerned statutory authority, the respondent ceases to have any control over the same. The grant of occupation certificate is the prerogative of the concerned statutory authority and the respondent does not exercise any influence in any manner whatsoever over the same. There is a delay of around 4 months caused due to the non-issuance of the occupation certificate by the statutory authority while calculating the period of delay. Therefore, it is respectfully submitted that the time period utilised by the concerned statutory authority for granting the occupation certificate is liable to be excluded from the time period utilized for the implementation of the project. Without prejudice to the fact that the due date stood amended, it is submitted that the grace for obtaining the occupation certificate should be duly considered.

- XIII. That thereafter, and only after obtaining the requisite permissions, the respondent legally offered the possession of the unit to the complainants on 17.11.2020. The complainants thereafter executed the indemnity cum undertaking for possession on 12.12.2020 and subsequently, the physical possession of the unit was taken on 20.03.2021. It needs to be categorically noted that the complainants have taken the peaceful possession after having satisfied themselves with regard to the measurement, location, dimension and development etc. of the unit and the complainants had no claim of any nature whatsoever against the company with regard to the size, dimension, area, location and legal status of the unit.
- XIV. That thereafter, the absolute title over the unit was transferred to the complainants through conveyance deed dated 26.10.2021 bearing vasika no. 7742. That the complainants after having executed the conveyance deed for over 2 years, taking peaceful possession of the unit, and having enjoyed such possession for such a long period, should not be entitled to claim the interest on the delayed possession. Thus, the present complaint is devoid of any cause of action and is nothing but an abuse process of Law. It is submitted that a contract is deemed to be concluded after execution of the conveyance deed and hence the present complaint is liable to be dismissed with heavy costs. That after having slept on their rights for a number of years, the complainants cannot be rightly allowed to have the present claims. 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.

- XV. That the present complaint is a frivolous attempt of the complainants to extract monies out of the respondent. That there exists no cause of action for the complainants to file the present complaint. That the respondent has made good on all parts of his responsibilities and obligations under the agreement read with the transfer documents and under the law, rules and regulations. That for the reason of non-existence of an existing cause of action, this complaint is liable to be dismissed on this ground alone.
- XVI. That moreover, it is submitted that the unit was offered to the complainants in 11 months of execution of nomination letter. It needs to be categorically noted that the construction of the unit was completed at this time as is evident from the fact that the occupancy certificate was already applied on 20.07.2020. That the delay caused by the competent authority in the grant of occupancy certificate cannot be made attributable to the respondent builder. That having knowledge of the existing delay, due to circumstances beyond the control of the respondent, the application of occupancy certificate having been made, the complainants willingly and voluntarily entered into the agreement for sell and the transfer documents thereof leading to their nomination. That such prior knowledge, willing and self-initiated endorsement of the complainants, without any protest, amounts to acceptance of the existing circumstances and the complainants cannot be allowed to reap benefits by extracting monies from the respondent and forgoing their complete satisfaction against the unit. Hence, the complaint is liable to be dismissed with costs against the complainants.

- XVII. That since the complainants were already in knowledge of the delay caused and accordingly chose to amend the due date to July 2020 and hence their present claim cannot be rightly made. Accordingly, the present complaint is liable to be dismissed.
- XVIII. That complainants availed a loan facility from their bankers HDFC Ltd., and accordingly, a tri-partite agreement was executed in respect of the unit in question. The respondent issued a letter to HDFC Limited marking a lien in its favour with respect to unit in question. Thus, HDFC bank is a necessary and proper party to the present complaint. The complainant(s) have failed to implead HDFC Limited as a party to the present complaint. Therefore, the present complaint is liable to be dismissed on account of the non-joinder of necessary party.
- XIX. That without accepting the contents of the complaint in any manner whatsoever, the *bonafide* conduct of the respondent has to be highlighted as the respondent has raised various credit memos: on account of anti-profiting. That the respondent has issued credit memos on account of anti-profiting of Rs.20,652/- on 18.12.2019, Rs.17,350/- on 12.04.2019, and Rs.76,278/- on 19.08.2019, as is evident from the SOA dated 17.11.2020. That without prejudice to the rights of the respondent, delayed interest if any, has to be calculated only on the amounts deposited by the allottees/ 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 allottees/ complainants towards delayed payment charges or any taxes/ statutory payments etc.

- XX. That in light of the *bona fide* conduct of the respondent, the peaceful possession having been taken by the complainants, compensation taken by the complainants at the time of offer of possession, non-existence of cause of action and the frivolous complaint filed by the complainants, this complaint is bound to be dismissed with costs in favour 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

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) The promoter shall-

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

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

9. So, in view of the provisions of the Act of 2016 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 objections raised by the respondent:

F.I Objection regarding the agreement being concluded on execution of conveyance deed

10. The respondent has raised an objection that the instant complaint is not maintainable as the agreement dated 05.10.2010 is concluded upon execution of conveyance deed dated 26.10.2021, the complainants are now estopped from raising these belated claims/demands as they themselves had acknowledged and accepted that "that the vendee confirms and undertakes not to raise any objection, right, claim etc. over such community facilities either in his/her/their individual capacity or as a member of any association of owners, etc. at any point in time."
11. The Authority observed that though the conveyance deed has been executed on 26.10.2021 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 05.01.2014 but the same was offered on 17.11.2020 after a delay of more than 6 years. 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 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 non-joinder of HDFC Bank as necessary party.

12. The respondent has raised a contention that the filing of present complaint without making HDFC Bank as a party to the same is bad in eyes of law as the complainants along with the respondent and the HDFC bank had executed a tri-partite agreement. But there is no document on record evidencing the same fact. There is a letter dated 04.12.2021 stating that a housing loan has been advanced by the HDFC bank in favour of the complainants but no loan amount is mentioned in the said letter. Further no loan amount was disbursed by the bank to the complainants as per the documents available on record. Therefore, there is no privity of contract between the parties and there is no need to make the HDFC bank a party to the present complaint. Thus, the contention of the promoter stands rejected.

F.III Objection regarding delay due to force majeure circumstances

13. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various construction bans, issue of second staircase, default of contractors, lack of availability of building material, regulation of the construction and development activities by the judicial authorities including NGT in NCR on account of the environmental conditions, restrictions on usage of

ground water by the High Court of Punjab & Haryana, demonetization of currency. But all the pleas advanced in this regard are devoid of merit. As the events taking place such as restriction on construction due to weather conditions were for a shorter period of time and are yearly one and do not impact the project being developed by the respondent and are to be considered while fixing the timelines for completion of the project.

14. Further, the authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit by 05.01.2014 including a grace period 3 months. The respondent has specifically stated in its reply that due to issue of staircase and default of contractor, the respondent was unable to complete the unit. Though the complainants wrote a letter to the respondent requesting the nomination of the unit in their names and the amended due date i.e., July, 2020 was mentioned in the same and requested the respondent to get a buyer's agreement executed with them with the amended terms so that they can make the payment of outstanding dues but the same was never done by the respondent. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

G. Findings on the relief sought by the complainants:

- G.1 Direct the respondent to pay the interest @ 18% p.a. as payment, towards delay in handing over the property in question as per provisions of the Act of 2016 and Rules, 2017;**

15. 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, —

A

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."

16. Clause 11(i) of buyer's agreement dated 05.10.2010 provides for handing over of possession and is reproduced below:

11. POSSESSION

(i) Time of handing over the Possession

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 months from the date of execution of this buyer's agreement. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of three months, for applying and obtaining the occupation certificate in respect of the floor and/or the project.

(Emphasis supplied)

17. 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 execution of agreement with grace period of 3 months.
18. The said grace period is allowed in terms of order dated 08.05.2023 passed by the Hon'ble Appellate Tribunal in **Appeal No. 433 of 2022 tilted as Emaar MGF Land Limited Vs Babia Tiwari and Yogesh Tiwari** wherein it has been held that if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. The relevant portion of the order dated 08.05.2023, is reproduced as under:

"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."

19. 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 05.01.2014 including grace period of 90 days.
20. The counsel for the complainants vide proceedings of the day dated 10.10.2024 stated that the complainant is seeking DPC after computing the zero period allowed by Hon'ble Supreme Court of India on 10.01.2022 in M.A. No. 21 of 2022 of suo-moto writ petition Civil No. 3 of 2020. And the complaint is within limitation after computing the said zero period allowed by the Supreme Court of India. The period from 15.03.2020 to 28.02.2022 was quoted as zero period vide order dated on 10.01.2022 in M.A. No. 21 of 2022 of suo-moto writ petition Civil No. 3 of 2020 by Hon'ble Apex Court.
21. **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.

22. 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.
23. 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%.
24. 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;"*
25. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
26. The complainants in the present complaint are subsequent allottees and had purchased the apartment in question from the original allottee and

thereafter, the respondent had acknowledged the same transaction vide nomination letter dated 30.12.2019. As per the possession clause of the agreement, the respondent-developer proposes to handover the possession of the allotted unit by 05.01.2014 including a grace period 3 months. The respondent has specifically stated in its reply that due to issue of staircase and default of contractor, the respondent was unable to complete the complete the unit and the complainants were informed that the due date has been amended to July, 2020 due to the above mentioned circumstances. He further contented that the amended due date of possession is mentioned in the nomination letter dated 30.12.2019. But as per the documents placed on record there is no amended due date of possession mentioned in the said letter. Though the complainants wrote a letter to the respondent requesting the nomination of the unit in their names and the amended due date i.e., July, 2020 was mentioned in the same, but the complainants have requested the respondent in the same letter to get a buyer's agreement executed with them with the amended terms so that they can make the payment of outstanding dues and the same was never done by the respondent. Thus, the complainants are entitled to delayed possession charges w.e.f. 30.12.2019 i.e., date on which the complainants stepped into the shoes of the original allottee.

27. The respondent in its reply mentioned that credit memos on account of anti-profiting of Rs.20,652/- on 18.12.2019, Rs.17,350/- on 12.04.2019, and Rs.76,278/- on 19.08.2019 amounting to Rs.1,14,280/- are issue to the complainants and the same is evident from the SOA dated 17.11.2020.
28. 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 05.01.2014 but the offer of possession was made on 17.11.2020 and the conveyance deed was executed on 26.10.2021. 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 date on which the complainants entered into the shoes of the original allottee i.e., 30.12.2019 till offer of possession (17.11.2020) after obtaining occupation certificate plus two months i.e., 17.01.2021 or actual taking over of possession i.e., 20.03.2021, 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. Since the offer of possession after obtaining occupation certificate plus two months is earlier, the complainants are entitled for delayed possession charges at the prescribed rate of interest i.e., 11.10% per annum from 30.12.2019 to 17.01.2021 on the amount paid by the complainants after deduction of amount paid by credit memos.

G.II Direct the respondent to pay an amount of Rs.50,000/- to the complainants as cost of present litigation.

29. 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

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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:

30. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondent is directed to pay delay interest to the complainants against the paid-up amount after at the prescribed rate i.e. 11.10% p.a. for every month of delay from the date of nomination letter i.e., 30.12.2019 till offer of possession after obtaining occupation certificate plus two months i.e., 17.01.2021, being earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
 - ii. The amount paid on account of delay compensation, if any shall be adjusted.
 - iii. A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.
31. Complaint stands disposed of.
32. File be consigned to registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.01.2025