

Complaint no. 7934 of 2022

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

Complaint no. : 7934 of 2022  
First date of hearing: 26.05.2023  
Order reserved on: 11.10.2024  
Order pronounced on: 20.12.2024

Satyam Kumar  
Address: - C-6A/4C Janakpuri, New Delhi 110058

**Complainant**

Versus  
Haamid Real Estate Pvt Ltd  
Address: - 232B, 4th Floor, Okhla Industrial Estate,  
Phase-3, New Delhi-110020

**Respondent**

**CORAM:**

Shri Arun Kumar

**APPEARANCE:**

Shri Gautam Gupta

Shri Dhruv Rohatgi

**Chairman**

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. The present complaint dated 22.12.2022 has been filed by the complainant 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	"The Peaceful Homes", Sector 70A, Gurgaon
2.	Project area	8.38 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no. and validity status	16 of 2009 dated 29.05.2009 valid upto 28.08.2024 73 of 2013 dated 30.07.2013 valid upto 09.07.2019
5.	Name of licensee	Haamid Real Estates Pvt. Ltd.
6.	RERA Registered/ not registered	63 of 2019 dated 22.10.2019
7.	RERA registration valid up to	31.12.2019
8.	Date of agreement (BBA executed between the original allottee and the respondent) dated	08.07.2014 (page no. 21 of complaint)
9.	Unit No.	C243, 24 <sup>th</sup> floor, Tower C (page no. 23 of complaint)
10.	Unit area admeasuring	1565 sq. ft. (page no. 23 of complaint)
11.	Date of commencement of excavation	10.05.2014 (Page no. 71 of complaint)

12.	Endorsement in favour of complainant dated	16.12.2014
13.	Tripartite agreement	28.09.2015 (page no. 216 of reply)
14.	Possession clause as per agreement dated 08.07.2014	<p><b>11 (a). Schedule for possession of the Unit- Subject to Force Majeure, as defined herein and further subject to the Allottee not being in default under any part of this Agreement including not limited to the timely payment of the Total Price and also subject to the Allottee having complied with all formalities or documentation prescribed by the company, the Company endeavours to handover the possession of the Unit to the Allottee within a period of 36 months from the date of commencement of construction of the project, which shall mean the date of commencement of the excavation work of the Project Land and this date shall be duly communicated to the Allottee. The Allottee further agrees and understands that the company shall additionally be entitled to a period of 6 months after the expiry of the said commitment period for any contingencies or delay in construction including for obtaining the Occupation Certificate of the Project from the Government Authorities.</b></p> <p>(Page 34 of complaint)</p>
15.	Due date of possession	10.11.2017 (Calculated 3 years from the date of commencement of excavation) Note:- Grace period included
16.	Total sale consideration	Rs. 1,10,17,405/- (As per account statement on page no. 71 of complaint)
17.	Amount paid by the complainant	Rs. 1,07,34,852/-

		(As per account statement on page no.191 of reply)
18.	Occupation certificate received on	30.07.2019 (Page no. 185 of reply)
19.	Offer of Possession	05.11.2019 (Page no. 66 of complaint)
20.	Possession Letter	13.02.2021 (page no. 210 of reply)
21.	Compensation for delayed possession charges paid by the respondent to the complainant for the period 10.11.2017 to 10.11.2019 i.e.	Rs. 3,75,600/-

### B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
- i. That the respondent had launched a new residential project called "The peaceful homes" in Sector 70A, Gurugram, Haryana & had published many advertisements for the project to attract the public at large. That till date the complainant have paid Rs. 1,23,11,428/- towards payment for the flat no C-243 of the project "The peaceful homes" in Sector 70A, Gurugram, Haryana.
  - ii. That on 25.05.2013 allotment letter for flat no C-243 was issued to the complainant by the builder. That on 08.07.2014 a flat buyer's agreement was made and executed between the respondent and original buyer for the above-mentioned flat bearing no c-243 on the 24th floor of tower c. That the original buyers had opted for

construction linked plan of payment and as per the FBA. Under clause 11 sub-clause (a) of the FBA, the possession of the unit was to be handed over within three years, with a six-month grace period thereon from the date of commencement of excavation (10 May 2014) i.e., by 10.11.2017 (proposed date of latest possession). An endorsement was made in favour of the complainant by the respondent builder by which ownership of the said property was transferred from Ms. Divyana Gupta to the complainant. Thereby, the complainant stepped into the shoes of the original buyers.

- iii. That the possession of the said flat is delayed by more than 3 years. Despite facing serious hardship on account of the delay, the Complainant do not wish to withdraw from the project but should be paid delayed possession charges/ interest as prescribed under the Act. That the complainant had complied with all the terms and conditions of the flat buyer's agreement, but the respondents failed to meet up with their part of the contractual obligations and thus are liable for compensation for delayed possession from the due date of possession till date. It is pertinent to mention here that the complainant/original buyers did not default in any payment from the very beginning except for minor delay of few days on some occasions but the respondents have not honoured their part of commitment. For a delay beyond 12 months the FBA vide Clause 14 provides for payment of Rs 10/- per square feet per month for delayed handing over of the said flat of super area 1565 sq. ft. but it may be noted that this is grossly inadequate and one-sided condition which has encouraged the respondent to delay the handover of flat. Till date no adequate amount has been paid back

- to the complainant and the respondents are enjoying the hard-earned money of the complainant for nearly 3 years.
- iv. That till date the complainant has not been paid their dues in lieu of the delayed possession according to the HRERA guidelines but only an arbitrary amount has been credited to the complainant, one that is grossly insufficient and inadequate. That despite multiple attempts at the respondent builder to execute the conveyance deed, the respondent builder refused to execute the conveyance deed till the time an indemnity bond cum undertaking wasn't executed by the complainant.
- v. That the complainant should be adequately reimbursed as the burden of excess stamp duty charges due to increase in stamp duty on account of the delay on part of the builder in executing the conveyance deed, falls on the complainant and thus, the builder should reimburse the same. That on 05.11.2019 an invalid, illegal, malafide, arbitrary intimation of possession letter was sent by the respondent to the complainant as the unit in question was not complete and ready to take physical possession. That after repeated follow ups and reminders the respondent builder finally handed over physical possession 13.02.2021. That the copy of the intimation of possession letter sent by the respondent to the complainant dated 05.11.2019 alongwith photographs of unit and physical handing over of possession dated 13.02.2021. That on 03.02.2021, the respondent sent the account statement/ledger to the complainant.
- vi. That the respondent builder has also levied arbitrary charges of monthly maintenance charges, club running charges, excess VAT

deductions, etc without handing over physical possession and the same should be deducted and waived off. That on 16.01.2021 a letter was sent by Axis Bank Ltd. to the respondent builder informing the latter about the former having no objection in handing over the possession of the property at hand to the complainant. That on 04.02.2021 a letter was sent by the complainant to the respondent builder seeking a reimbursement of Rs. 17,02,721/- from the respondent builder. Moreover, in the present project the respondents have charged the complainant based on super built up area whereas as per the HRERA 2016 Act, the basic sale price is liable to be paid based on the carpet area only. This is a clear and blatant violation of the provisions, rules and object of the Act. On 02 Mar 2021, the respondents had assured complainant by email that refund amount is under process and would soon be credited. 18. on 02.06.2021, the respondents issued refund cheque of Rs. 2,37,446/- in favour of Satyam Kumar.

vii. On 06 Jun 2021, the complainant another letter delayed possession or reimbursement of amount of Rs 9,85,698.00 due to delay in possession and Interest for delay in refund to Complainant. On 08 Jun 2021, the Complainant sent another letter to Respondents seeking for reimbursement of amount of Rs 54,35,569/- due to delay in possession and interest for delay in refund to Complainant.

**C. The complainant is seeking the following relief:**

4. The complainant has sought following relief(s):

- i. Direct the respondent/builder to pay delay possession charges and not to charge monthly maintenance charges, excess VAT deductions and holding charges without handing over physical

possession and the same shall be deducted/waived off as the complainant should not be made liable to pay any of such arbitrary charges.

- ii. Direct the respondent/builder to execute the conveyance deed without prejudice to any of the legal rights of the complainant.

**D. Reply filed by the respondent.**

5. The respondent had contested the complaint on the following grounds:

- i. That the complainant has 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 08.07.2014, as shall be evident from the submissions made in the following paras of the present reply. The respondent craves leave of this authority to refer to and rely upon the terms and conditions set out in the buyer's agreement in detail at the time of the hearing of the present complaint, so as to bring out the mutual obligations and the responsibilities of the respondent as well as the complainant.
- ii. That the complainant are estopped by their own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. It is submitted that the complainant has already taken the possession of the said unit, as such, the respondent has already complied with its obligations under the buyer's agreement. That the transaction between the complainant and the respondent stands satisfied. The reliefs sought in the false and frivolous complaint are barred by estoppel. That the complainant 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. That the complainant has not come before this Authority with clean hands and have suppressed vital and material facts from this Authority. The correct facts are set out in the succeeding paras of the present reply.

- iii. That the original allottee (Ms. Divyana Gupta) had approached the respondent and expressed an interest in booking an apartment in the residential group housing colony developed by the respondent and booked the unit in question, bearing number C-243, 24<sup>th</sup> Floor, Tower-C admeasuring 1565 sq. ft. (tentative area) situated in the project developed by the Respondent, known as "The Peaceful Homes" in revenue estate of Village Palra, Sector 70A. That the original allottee vide application form applied to the respondent for provisional allotment of the unit bearing number c-243 in the said project
- iv. That the said unit allotted to the original allottee was provisional and subject to change as was categorically agreed between the parties. That the relevant clauses of the of the Application Form are reiterated as under:
- 1. The Applicant has applied for the provisional allotment of a Unit (the "Unit") in the Project and clearly understands that the allotment of the Unit by the Company shall be purely provisional till such time that the Unit Buyer's Agreement, in the format prescribed by the Company, is executed between the Company and the Applicant.*
  - 13. The Company is in the process of developing the Project in accordance with the tentative layout and buildings plans, which have been seen by the Applicant. However, if any alterations, revisions, modifications or changes are required in the layout plans, building plans and/or drawings, whether by Government, DGTC or any other competent statutory authority(ies) or due to technical reasons or otherwise required by the Company in the best interest of the Project, the Applicant shall have no objection to the same and*

*shall abide by such changes, alterations, modifications etc. and shall fully support and cooperate with the Company in this matter. The Applicant further understands and agrees that although every attempt shall be made by the Company to adhere to the size, location, product mix and super area of the Unit, however, in the event that there is any change in the Unit's location or product mix or variation in its size to the extent of 5% at the time of final measurement, the Applicant shall accept the same and the applicable PLC or the Sale Consideration agreed herein or other charges, as the case may be, shall either be payable or refundable in proportion to such variation without any interest thereon and no other claim, whatsoever, monetary or otherwise shall lie against the Company in any manner whatsoever by the Applicant.*

- v. That thereafter, buyer's agreement dated 08.07.2014 was executed between the original allottee and the respondent. The said agreement was endorsed in favour of the complainant. That pursuant to the execution of the buyer's agreement, the original allottees approached the respondent in order to substitute her allotment rights in the said unit in favor of the complainant. Furthermore, the complainant had also sent the letter dated 14.11.2014 on the same lines requesting the respondent to substitute the name of the original allottee with the complainant. Moreover, the complainant undertake to abide by the terms and conditions as detailed in the application form, buyer's agreement. That the copy of the substitution letters dated 14.11.2014 issued by the complainant and original allottee for substitution of the allotment rights of the original allottee in favor of the complainant.
- vi. It is pertinent to mention that the complainant further executed an affidavit dated 14.11.2014 and an indemnity cum undertaking dated 14.11.2014 whereby complainant had consciously and voluntarily declared and affirmed that they would be bound by all the terms and conditions of the provisional allotment in favor of the

original allottee. It was further declared by the complainant 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. Furthermore, the respondent, at the time of endorsement of the unit in question in their favor, had specifically indicated to the complainant <sup>and</sup> ~~has~~ apprised them about the terms and conditions of the agreement. It is submitted that the complainant prior to the substitution of the said unit, had conducted extensive and independent enquiries regarding the project and it was only after the complainant was fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondent to undertake development of the same, that the complainant took an independent and informed decision to purchase the unit, uninfluenced in any manner by the respondent. The complainant consciously and willfully opted for the construction linked payment plan as per their choice for remittance of the sale consideration for the unit in question and further represented to the respondent that they shall remit every installment on time as per the payment schedule. That the respondent had no reason to suspect bonafide of the complainant. That it is submitted that an application form dated 13.11.2014 was executed by the complainant. The complainant have intentionally distorted the real and true facts and have filed the present complaint in order to harass the respondent and mount

undue pressure upon it. It is submitted that the filing of the present complaint is nothing but an abuse of the process of law. That in the manner as aforesaid, the complainant stepped into the shoes of the original allottee.

- vii. That in the present case, the complainant failed to abide by the terms and conditions of the buyer's agreement and defaulted in remitting timely installments. That the respondent was constrained to issue payment reminder letters to the complainant. The respondent had categorically notified the complainant that they had defaulted in remittance of the amounts due and payable by them. It was further conveyed by the respondent to the complainant that in the event of failure to remit the amounts mentioned in the said reminders, the respondent would be constrained to cancel the provisional allotment of the unit in question. It is submitted that the rights and obligations of the complainant as well as the respondent are completely and entirely determined by the covenants incorporated in the buyer's agreement which continue to be binding upon the parties thereto with full force and effect. Clause 8 of the buyer's agreement provides that the allottee agrees that time is essence with respect to due performance by the allottee of all the obligations under this agreement and more specifically timely payment of sale consideration and other charges, deposits and amounts payable by the allottee as per this agreement and/or as demanded by the company from time to time.
- viii. The complainant was obligated to make payments against the said unit, as is evident from the payment plan annexure v of the

agreement, the total cost of the unit (exclusive of the stamp duty and other charges) was Rs. 1,14,94,510/-. That the timely remittance of the installments was required to be made as per the stages of payment agreed to in the payment plan. That, moreover, it was the obligation of the complainant to make the payments against the said unit. That as per clause 5 of the agreement, the allottee agrees to pay the remaining total price of the unit as prescribed in payment plan with this agreement as may be demanded by the company within the time and in manner specified therein. Moreover, it needs to be categorically noted that time is of essence with respect to the performance by the allottees of all the obligations and more specifically timely payment of sale consideration and other charges, deposits and amounts payable by the allottee, as per clause 8 of the agreement.

- ix. That however, in breach of the contract conditions, the complainant has been in constant default in making the payments. The Respondent has issued various demand letter, reminders of first, second and third instance and final notices from 2015 to 2018. The Hon'ble Supreme Court noted in case **Saradmani Kandappan and Ors. vs S. Rajalakshmi &Ors. decided on 04.07.2011, MANU/SC/0717/2011: (2011) 12 SCC 18** held that the payments are to be paid by the purchaser in a time bound manner as per the agreed payment plan and if he fails to do so then the seller shall not be obligated to perform its reciprocal obligations and the contract shall be voidable at the option of the seller alone and not the purchaser.

- x. That the Complainant by filing the present complaint and by taking such baseless and untenable pleas is just trying to conceal the material facts in order to somehow cover up their own wrongs, delays and latches and to wriggle out of their contractual obligations by concocting false and frivolous story. Despite all the goodwill gestures extended by the Respondent, the Complainant are trying to illegal extract benefits from the Respondent and their main aim is to cause wrongful gain to themselves and wrongful loss to the Respondent from time to time. Therefore, the present Complaint is filed with grave illegalities and lack of jurisdiction and the same is liable to be dismissed at the very outset and the Complainant shall be directed to file pursue the complaint before the civil court for any dispute arises from the Agreement.
- xi. That the law of equity and justice cannot allow such complainant to reap benefits of such opportunistic attitude and will strive for balance of rights of both the parties at dispute. That this authority should not allow the complainant to mislead the Authority and to misuse real estate (regulation and development) act, 2016 for harassing the builder. That despite the utter failure of the complainant in fulfilling the obligations, the respondent has always showed exemplary conduct. that it is further submitted 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 18.03.2019. occupation certificate was thereafter issued in favour of the respondent dated 29.10.2019. It is pertinent to note that once an application for grant of occupation certificate

is submitted for approval in the office of the concerned statutory authority, the respondent ceases to have any control over the same. The grant of sanction of the occupation certificate is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence. as far as the respondent is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authority for obtaining of the occupation certificate. No fault or lapse can be attributed to the respondent in the facts and circumstances of the case. Therefore, the time period utilized by the statutory authority to grant occupation certificate to the respondent is necessarily required to be excluded from computation of the time period utilized for implementation and development of the project.

- xii. That it is submitted that pursuant to the issuance of the occupation certificate, the respondent sent an intimation of occupation certificate letter dated 30.07.2019 intimating the complainant about the receipt of the occupation certificate and initiation of the process of offer of possession. That the complainant was offered possession of the unit in question through letter of offer of possession dated 05.11.2019. The complainant was 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 complainant. That the copy of the offer of possession dated 05.11.2019. However, the complainant 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. the respondent

explained to the complainant that they are not entitled to any compensation in terms of the buyer's agreement on account of default in timely remittance of installments as per schedule of payment incorporated in the buyer's agreement. The respondent earnestly requested the complainant to obtain possession of the unit in question and to further complete all the formalities regarding delivery of possession. However, the complainant did not pay any heed to the legitimate, just and fair requests of the respondent and threatened the respondent with institution of unwarranted litigation. Without prejudice, as a goodwill gesture, the respondent waived off the delay interest charges amounting to Rs. 1,97,501.32/- and even credited an amount of Rs. 3,73,600/- as compensation to the complainant.

- xiii. That it is pertinent to mention that an intimation of stamp duty charges and registration charges letter dated 08.11.2019 was issued to the Complainant requesting them to remit the applicable stamp duty charges but all requests of the Respondent fell on deaf ears of the Complainant. That the copy of the intimation of stamp duty charges and registration charges letter dated 08.11.2019. That the Complainant did not have adequate funds to remit the balance payments requisite for obtaining possession in terms of the Buyer's Agreement and consequently in order to needlessly linger on the matter, the Complainant refrained from obtaining possession of the unit in question. The Complainant needlessly avoided the completion of the transaction with the intent of evading the consequences enumerated in the buyer's agreement. It is further submitted that the respondent even issued handover intimation



letters, possession reminders to the complainant in order to handover the possession of the said unit, on the contrary, the complainant didn't gave any heed to the legitimate requests of the respondent. that the copy of the handover intimation letters, possession reminders. Therefore, there is no equity in favour of the complainant. without admitting or acknowledging in any manner the truth or correctness of the frivolous allegations leveled by the complainant and without prejudice to the contentions of the respondent, it is submitted that the alleged interest frivolously and falsely sought by the complainant is illegal and bereft of logic. The complainant are not entitled to contend that they are entitled for any sort of delayed possession charges even after receipt of offer for possession within stipulated time. the complainant has consciously and maliciously refrained from obtaining possession of the unit in question. Consequently, the complainant is liable for the consequences including holding charges, as enumerated in the buyer's agreement, for not obtaining possession.

- xiv. That thereafter, the complainant approached the respondent for taking the possession of the said unit in question. That an indemnity cum undertaking for taking the possession of the said unit dated 03.02.2021 was executed by the complainant. That the copy of the indemnity cum undertaking dated 03.02.2021. Thereto, a unit handover letter dated 13.02.2021 was executed by the complainant, 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 complainant 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 favor of the complainant to institute or prosecute the instant complaint. The complainant has preferred the instant complaint on absolutely false and extraneous grounds in order to needlessly victimize and harass the respondent.

- xv. That it is pertinent to mention that after execution of the unit handover letter dated 13.02.2021 between the complainant and the respondent and even after obtaining the possession of the unit in question by the complainant, the complainant is left with no right, entitlement or claim against the respondent. It needs to be highlighted that respondent has further approached the complainant on number of occasions in order to execute the conveyance deed in respect of the unit in question but to no avail. That the execution of the conveyance deed was delayed on one pretext or the other, that the respondent has fulfilled all its obligations and no right or liability can be asserted by the complainant against the respondent. The contentions advanced by the complainant in the false and frivolous complaint are barred by estoppel.
- xvi. That, without admitting or acknowledging the truth or legality of the allegations advanced by the Complainant and without prejudice to the contentions of the Respondent, it is respectfully submitted that the provisions of the act are not retrospective in nature. In the year,2012 on the directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) was regulated. The Hon'ble Supreme Court directed framing of modern

mineral concession rules. Reference in this regard may be had to the judgment of "**Deepak Kumar v. State of Haryana, (2012) 4 SCC 629**". The competent authorities took substantial time in framing the rules and in the process the availability of building materials including sand which was an important raw material for development of the said Project became scarce. Further, the Respondent was faced with certain other force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. It is pertinent to state that the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide Order dated 2.11.2015 mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna Riverbed. These orders infact inter-alia continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High Court and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was almost 2 years that the scarcity as detailed aforesaid continued, despite which all efforts were made and materials were procured at 3-4 times the rate and the construction continued without shifting any extra burden to the customer. The

time taken by the Respondent to develop the project is the usual time taken to develop a project of such a large scale Further, the parties have agreed that in the event of delay, the Allottee shall be entitled to compensation on the amounts paid by the allottee, which shall be adjusted at the time of handing over of possession/execution of conveyance deed subject to the allottee not being in default under any of the terms of the agreement.

- xvii. That it is submitted that the respondent has acted strictly in accordance with the terms and conditions of the agreement between the parties. There is no default or lapse on the part of the respondent. the allegations made in the complaint inter-alia that the respondent has failed to comply with the obligations under the agreement are bad in law. On the contrary, it is the complainant who are in clear breach of the terms of the agreement by not remitting the outstanding amount of the said unit in question within the stipulated time and by not coming forward to execute the conveyance deed of the said unit in question within the agreed time. that the respondent has duly fulfilled its obligations under the buyer's agreement. There is no default or lapse in so far as the respondent is concerned. The allegations leveled by the complainant is totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

6. 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**

7. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

**E.I Territorial jurisdiction**

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with 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**

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

**Section 11**

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(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.

10. 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 complainant at a later stage

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

**11. Objections raised by the respondent.**

**F.1 Objection regarding maintainability of complaint on account of complainant being investor.**

12. The respondent took a stand that the complainant is 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 allotment letter, it is revealed that the complainant is buyer's, and have paid a total price of Rs.1,07,34,852/- 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 complainant, it is crystal clear that the complainant is allottee(s) 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, the contention of the promoter that the allottee being investor are not entitled to protection of this Act also stands rejected.

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

14. One of the contentions of the respondent is that the authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the buyer's agreement executed between the parties. The respondent further submitted that the provisions of the Act are not retrospective in nature and the provisions of the Act cannot undo or modify the terms of buyer's agreement duly executed prior to coming into effect of the Act.
15. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of

the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of hon'ble Bombay High Court in *Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)* which provides as under:

*"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.....*

*122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."*

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

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



*one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."*

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

**F.III Whether a subsequent allottee who had executed an indemnity cum undertaking with waiver clause is entitled to claim delay possession charges.**

18. The respondent submitted that complainant executed various transfer documents including indemnity cum undertaking in terms of which the complainant agrees and undertook to be bound by the buyer's agreement and also admitted that they shall not be entitled to any compensation in the event delay in delivering the possession. Therefore, the complainant is not entitled to any compensation.
19. The Authority has comprehensively decided this issue in **CR/4031/2019 titled as Varun Gupta Vs Emaar MGF Land Limited** wherein the authority has observes as under:

*"The authority holds that irrespective of the execution of the affidavit/undertaking by the complainants/subsequent allottees at the time of transfer of the unit in their name as allottee in place of the original allottees in the record of the promoter does not disentitle them from claiming the delay possession charges in case there occurs any delay in delivering the possession of the unit beyond the due date of delivery of possession as promised even after execution of an indemnity-cum-undertaking."*

Thus, in view of the above the objections raised by the respondent stands rejected.

**G. Findings on the relief sought by the complainant.**

G.I Direct the respondent/builder to pay delay possession charges and not to charge monthly maintenance charges, excess VAT deductions and holding charges without handing over physical possession and the same shall be deducted/waived off as the complainant should not be made liable to pay any of such arbitrary charges.

G.II Direct the respondent/builder to execute the conveyance deed without prejudice to any of the legal rights of the complainant.

20. In the present complaint, the complainant intends to continue with the project and is 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."***

21. Clause 11 of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

**11. POSSESSION**

**(a) Schedule for possession of the Unit**

***Subject to Force Majeure, as defined herein and further subject to the Allottee not being in default under any part of this Agreement including not limited to the timely payment of the Total Price and also subject to the Allottee having complied with all formalities or documentation prescribed by the company, the Company endeavours to handover the possession of the Unit to the Allottee within a period of 36 months from the date of commencement of***

*construction of the project, which shall mean the date of commencement of the excavation work of the Project Land and this date shall be duly communicated to the Allottee. The Allottee further agrees and understands that the company shall additionally be entitled to a period of 6 months after the expiry of the said commitment period for any contingencies or delay in construction including for obtaining the Occupation Certificate of the Project from the Government Authorities.*

22. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment time period for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.
23. **Due date of possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 36 (thirty-six) from the date of commencement of construction

of the project, and further provided in agreement that promoter shall be entitled to a grace period of 6 months after the expiry of the said commitment period for any contingencies or delay in construction including for obtaining the Occupation Certificate of the Project from the Government Authorities. The period of 36 months expired on 10.11.2017 (calculating from the date of excavation i.e. 10.05.2014). 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 Lamd Limited Vs Babia Tiwari and Yogesh Tiwari** wherein it has been held that if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. The relevant portion of the order dated 08.05.2023, is reproduced as under:-

*"As per aforesaid clause of the agreement, possession of the unit was to be delivered within 24 months from the date of execution of the agreement i.e. by 07.03.2014. As per the above said clause 11(a) of the agreement, a grace period of 3 months for obtaining Occupation Certificate etc. has been provided. The perusal of the Occupation Certificate dated 11.11.2020 placed at page no. 317 of the paper book reveals that the appellant-promoter has applied for grant of Occupation Certificate on 21.07.2020 which was ultimately granted on 11.11.2020. It is also well known that it takes time to apply and obtain Occupation Certificate from the concerned authority. As per section 18 of the Act, if the project of the promoter is delayed and if the allottee wishes to withdraw then he has the option to withdraw from the project and seek refund of the amount or if the allottee does not intend to withdraw from the project and wishes to continue with the project, the allottee is to be paid interest by the promoter for each month of the delay. In our opinion if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. **So, in view of the above said circumstances, the appellant-promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the Occupation Certificate.** Thus, with inclusion of grace period of 3 months as per the provisions in clause 11 (a) of the agreement, the total completion period becomes 27 months. Thus, the due date of delivery of possession comes out to 07.06.2014."*

24. 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 10.11.2017 including grace period of 6 months.
25. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the prescribed rate. 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.*
26. The legislature in its wisdom in the subordinate legislation under 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.
27. 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., 20.12.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

28. **Rate of interest to be paid by the complainant in case of delay in making payments-** 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;"*

29. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% by the respondent/ promoter which is the same as is being granted to the complainant in case of delayed possession charges.
30. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement dated 08.07.2014. By virtue of clause 11(a) of the buyer's agreement executed between the parties on 08.07.2014, the possession of the subject flat was to be delivered within a period of 36 months from the date of commencement of construction

of the project. For the reason above, the due date of possession is to be calculated from the commencement of construction of the particular tower i.e., 10.05.2014 and it is further provided in agreement that promoter is entitled for a grace period of 6 months. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 10.11.2017. Occupation certificate was granted by the concerned authority on 30.07.2019 and thereafter, the possession of the subject unit was offered to the complainant on 05.11.2019. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 08.07.2014 to hand over the possession within the stipulated period.

31. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 30.07.2019. The respondent offered the possession of the unit in question to the complainant only on 05.11.2019 so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. These 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject

to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 10.11.2017 till the expiry of 2 months from the date of offer of possession (05.11.2019) which comes out to be 05.01.2020. Interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges as per section 2(za) of the Act.

32. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delayed possession at prescribed rate of interest i.e. 11.10% p.a. w.e.f. 10.11.2017 till expiry of 2 months from the date of offer of possession (05.11.2019) which comes out to be 05.01.2020 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

33. Also, the amount of compensation already paid to the complainant by the respondent as delay compensation in terms of the buyer's agreement shall be adjusted towards delay possession charges payable by the promoter at the prescribed rate of interest to be paid by the respondent as per the proviso to section 18(1) of the Act.

#### **34. Conveyance Deed**

As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under obligation to get the conveyance deed executed in favour of the complainant. Whereas as per section 19(11) the Act of



2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.

A reference to the provisions of sec. 17 (1) and proviso is also must and which provides as under:

***Section 17: - Transfer of title***

*17(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws: Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.*

The respondent is under an obligation as per section 17 of Act to get the conveyance deed executed in favour of the complainant. The respondent is directed to get the conveyance deed executed within 3 months from the date of this order on payment of stamp duty and registration charges if not paid.

**35. Monthly maintenance charges**

The authority has decided this issue in the complaint bearing no. 4031 of 2019 titled as *Varun Gupta V/s Emaar MGF Land Ltd.* wherein the authority has held that the respondent is right in demanding monthly maintenance charges at the rates' prescribed in the builder buyer's agreement at the time of offer of possession. However, the respondent shall not demand the monthly maintenance charges for more than one year from the allottee even in those

cases wherein no specific clause has been prescribed in the agreement or where the MMC has been demanded for more than a year.

Keeping in view the facts above, the authority deems fit that the respondent is right in demanding monthly maintenance charges at the rate prescribed therein at the time of offer of possession in view of the judgement (supra). However, the respondent shall not demand the monthly maintenance charges for more than one (1) year from the allottee.

### 36. VAT

it is contended on behalf of the complainant that the respondent raised an illegal and unjustified demands towards VAT. It is pleaded that the liability to pay VAT is on the builder and not on the allottee. But the version of the respondent is otherwise and took a plea that while booking the unit as well as entering into the flat buyer's agreement, the allottee agreed to pay any tax/charges including any fresh incident of tax even if applicable retrospectively. The promoter shall charge VAT from the allottees where the same was leviable, at the applicable rate, if they have not opted for composition scheme. However, if composition scheme has been availed no VAT is leviable. Further, the promoter shall charge actual VAT from the allottees/prospective buyers paid by the promoter to the concerned department/authority on pro rata basis i.e. depending upon the area of the flat allotted to the complainant vis-a-vis total area of the particular project. However, the complainant(s) would also be entitled to proof of such payments to the concerned department along with a computation proportionate to the to the allotted unit before making payment under the aforesaid heads.

### 37. Holding charges

The authority has decided this in the complaint bearing no. 4031 of 2019 titled as *Varun Gupta V/s Emaar MGF Land Ltd.* wherein the authority has

held that the respondent is not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020. Therefore, the respondent shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed.

**H. Directions of the authority**

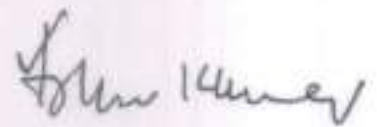
38. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to pay the interest at the prescribed rate i.e. 11.10% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 10.05.2017 till 05.01.2020 i.e. expiry of 2 months from the date of offer of possession (05.11.2019). The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.
- ii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules and thereafter monthly payment of interest be paid till date of handing over of possession shall be paid on or before the 10<sup>th</sup> of each succeeding month.
- iii. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement. The respondent is also not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement as per law settled by

hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

- iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
  - v. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
39. Complaint as well as applications, if any, stands disposed off accordingly.
40. File be consigned to registry.





(Arun Kumar)  
Chairman  
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.12.2024

**HARERA**  
**GURUGRAM**