

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

Complaint no. : 189 of 2023
Date of order : 29.01.2025

1. Alok Sharma
2. Babita Sharma
Both R/o: B-2/410, Plot No.-12,
Varun Apartments, Sector-9, Rohini,
Delhi.

Complainants

Versus

M/s Emaar MGF Land Ltd.
Office at: - House 28, Kasturba Gandhi Marg,
New-Delhi-110001.

Respondent

CORAM:
Shri. Ashok Sangwan

Member

APPEARANCE:
Gaurav Bhardwaj (Advocate)
Harshit Batra (Advocate)

Complainants
Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter

shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

Sr. No.	Particulars	Details
1.	Name of the project	"Palm Gardens", Sector-83, Village-Kherki Daulla, Gurugram, Haryana.
2.	Nature of the project	Residential
3.	Area of project	21.90 acres
4.	DTCP license	License No. 108 dated 18.12.2010
5.	RERA Registered	Registered 330 of 2017 Dated-24.10.2017
6.	Provisional allotment letter (Issued to original allottee Mrs. Mandip Kaur)	12.01.2011 (As on page no. 39 of complaint)
7.	Unit no.	05-0705, 7 th floor, Tower no.-05. (As on page no. 46 of complaint)
8.	Unit area	176.52 sq.fts. [Super-Area] (As on page no. 46 of complaint)
9.	Buyer's Agreement (Between original allottee and respondent)	09.05.2011 (As on page no. 41 of complaint)
10.	Nomination letter in favour of the	

	complainants	22.03.2012 (As on page no. 101 of reply)
11.	Possession clause	<p>Clause 10 POSSESSION</p> <p>(a) 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(Thirty Six) months from the date of start of construction, subject to timely compliance of the provisions of the Buyer's Agreement by the Allottee. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of 3(three) months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project.</p> <p>[emphasis supplied] (As on page no. 53 of complaint)</p>
12.	Due date of possession	09.11.2015 [Calculated 36 months from date of start of construction i.e., 09.08.2012 plus 3 months]
13.	Indemnity cum undertaking	19.03.2012 (As on page no. 94 of reply)
14.	Tri-partite Agreement	21.11.2012

	(Between complainants-respondent-Housing Development Finance Corporation Limited)	(As on page no. 83 of complaint) [Note- HDFC granted a Loan of Rs.52,00,000/-]
15.	Payment plan	Construction linked
16.	sales consideration	Rs.1,01,60,770/- (As per S.O.A dated 06.06.2023 on page no. 115 of reply)
17.	Total amount paid by the complainant	Rs.1,00,31,895/- [Calculated Rs.1,01,42,584 - Rs.84,515/- credit memo at entry no. 63 and Rs.26,714/- credit memo at entry no. 70] (As per S.O.A dated 06.06.2023 on page no. 116 of reply)
18.	Unit handover letter	03.07.2018 (As on page no. 118 of reply)
19.	Occupation certificate	10.01.2018 (As on page no. 103 of reply)
20.	Offer of possession	20.03.2018 (As on page no. 105 of reply)
21.	Unit handover letter	03.07.2018 (As on page no. 118 of reply)
22.	Conveyance deed	22.02.2019 (As on page no. 121 of reply)

B. Facts of the complaint

3. The complainants have made the following submissions: -

- I. That somewhere around mid- 2010, the respondent advertised about its project namely "Palm Gardens" in Sector-83, District Gurgaon. Believing the

representations of the respondent and on the lookout for an adobe for himself and his family, the complainants booked a unit in the said project by making a payment of Rs.7,50,000/- on 18.12.2010. It is pertinent to mention here that the complainants have purchased the said unit from its erstwhile owners named Mandeep Kaur and Sukh Chain Singh. Subsequent to the said purchase, the endorsement has been made in the name of complainants by the respondent and the complainants have stepped into the shoes of the previous buyers.

- II. That on 12.01.2011, the respondent sent an allotment letter allotting the unit bearing no. PGN-05-0705 admeasuring 1900 sq. ft. at a total basic price of Rs.76,34,200/- in the project. Thereafter, the complainants and the respondent executed a Builder Buyer Agreement on 09.05.2011. The Complainant took a loan from HDFC Bank in order to make the payment of total sale consideration of the said unit.
- III. That believing on the respondent's representations, the complainants kept on making payment as and when demanded. Till date, the complainants have paid a total sum of Rs.1,01,30,770/- towards the unit, as and when demanded, as against a total sale consideration of Rs.1,01,30,770/-.
- IV. That as per clause 10(a) of the Buyer's agreement, the respondent proposed to handover the possession of the unit within a period of 36 months from 09.08.2012 i.e. the date of start of construction along with grace period of 3 months, i.e. by 09.11.2015. However, the respondent failed in handing over possession in accordance with the said agreement. The complainant had paid a total sum of Rs.1,01,30,770/- towards the total sale consideration of Rs.1,01,30,770/- for the unit as and when demanded by the respondent. However, the respondent failed in handing over possession in accordance with the said agreement.

- V. That after 7 years of Builder Buyers agreement i.e 20.06.2018, the handover advice letter of the unit was issued by the respondent and the Occupation certificate was issued after so many years even after due date of possession. The respondent fraudulently kept the money of the complainant for so many years and never paid any interest for the delay.
- VI. That thereafter, the complainants contacted the respondent on several occasions regarding wrongful demand of parking charges and also some unfair and arbitrary clauses in the agreement. Also, a clarification was sought on the development of project and the date of delivery. However, no satisfactory answer was received from the respondent.
- VII. That subsequently, the complainant kept making calls and through several meetings kept inquiring as to when will the respondent deliver the project but the respondent's representatives never furnished a concrete answer to the same..
- VIII. That the complainants vide several e-mails requested the respondent to handover possession of the unit after completing the remaining construction of the project and the unit as well as the project was no where habitable. However, the respondent kept on threatening the complainants to impose the maintenance charges and holding charges in case the complainant don't take the possession of the said unit. Left with no other option, the complainant took the handover of the possession of the unit on 03.07.2018. It is further to note that at the time of handing over of possession, the complainant requested the respondent to make the payment on account of delay possession charges as the project got delayed but the respondent gave false assurance to do the same. It is further pertinent to note that at the time of booking, the respondent assured regarding the approach road for the project from the National Highway but till date the same has not been constructed.

IX. That the respondent highlighted and represented to the complainants that the project shall be constructed on a land of 21.90 acre and shall have the following salient and unique features at the time of delivery of possession of their unit:

- i. *24metre road leading to the project with direct road connectivity to NH-8 and Dwarka Expressway*
- ii. *1.5 acre mini golf course*
- iii. *Vast open Central Greens spread over 8 acre*
- iv. *Interconnected theme parks and formal concept gardens*
- v. *Recreational and sports facilities in the form of modern community centre and club consisting of swimming pool, splash pool, bowling alley, tennis, badminton and basketball courts, Gymnasium*
- vi. *3km jogging track*
- vii. *Segregation of pedestrian and vehicular movements*
- viii. *Dedicated play area for children*
- ix. *A Solar Power Plant, a Solar Photovoltaic Power Plant, LED Lamps for the project and buildings to save on recurring electricity expenditure. It is worthwhile to note that the electricity expenditure for common areas and facilities and amenities is being borne by complainants and other residents in the form of payment of Common Electricity Expenditure (CAE) every month.*
- x. *Construction of ramps in common areas and facilities*

X. That it is pertinent to note that as per clause 1.2 (c) of the buyer's agreement, upon delay payment by the allottee, the respondent can charge 24% simple interest per annum, however, on account of delay in handing over possession by the respondent, he is liable to pay merely Rs. 7.50/-per sq. ft. of the super area for the period of delay as per clause 13(a) of the said agreement.

XI. That the respondent is liable to pay delayed possession charges for every month of delay at the same interest rate at which he charged interest on account of delayed payment by the complainant.

XII. That the respondent had made representations and tall claims that the project will be completed on time. That the respondent has failed to complete the project on time, resulting in extreme kind of financial hardship, mental distress, pain and agony to the complainant along with the delay in handing over the possession of the unit, the respondent had failed in providing the amenities, services as promised by the respondents at the time of execution of the agreement.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
 - a) Direct the respondent to pay delayed possession charges.
 - b) Direct the respondent to return the Central greens Preferential Location Charges (PLC) of Rs.6,65,000/-.
 - c) Direct the respondent to charge delay payment charges at equitable rate of interest.
5. On the date of hearing, the Authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds: -
 - I. That the present complaint is untenable both in facts and in law and is liable to be rejected on this ground alone. The respondent has filed an application dated 04.07.2023 challenging the maintainability of the present complaint.
 - II. That the complainants are not "Allottees" but are Investors who have booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale. Therefore, no equity lies in favor of the complainants.

- III. That the original allottees approached the respondent and expressed interest in the booking of an apartment in the group housing colony being developed by the respondent known as "Palm Gardens" situated in Sector 83, Village Kherki Daula, Haryana. Prior to the booking, the original allottees conducted extensive and independent enquiries with regard to the project.
- IV. That thereafter the original allottees applied for provisional allotment of the unit. Pursuant thereto, unit bearing no PGN-05-0705, located in Tower 05, 7th Floor admeasuring 1900 sq. ft. was allotted vide provisional allotment letter dated 12.01.2011.
- V. Thereafter, two copies of the Buyer's Agreement were given to the erstwhile purchasers for execution but the same was delayed. Due to the delay in execution of the Buyer's Agreement, a reminder letter dated 25.04.2011 was also sent. Consequently, the Buyer's Agreement was executed between the original purchasers and the respondent on 09.05.2011. It is pertinent to mention that the Buyer's Agreement was consciously and voluntarily executed between the original allottees and the respondent and the terms and conditions of the same are binding on the parties hereto as well.
- VI. That as per clause 10(a) of the Buyer's Agreement, the due date of possession was subject to the allottees having complied all the terms and conditions of the Buyer's Agreement. That the original allottees as well as the complainants had defaulted/delayed in making the due payments, upon which, reminders were also served to the original allottees as well as the complainants, both of whom had paid delayed payment interest at multiple occasions.
- VII. That further, the original allottees approached the respondent and expressed their intention in lieu of transferring the rights, title, interest of

the said property to the complainants. That pursuant thereto, an Agreement to Sell dated 17.02.2017 was executed between the original allottees and the complainants for transferring rights, title, interest of the unit. The transfer was thereafter accepted by the respondent vide nomination letter dated 22.03.2012.

- VIII. That the complainants being subsequent buyers, have no right to seek delay possession charges or other reliefs. That at the time of nomination of the complainants, the project was already delayed due to reasons beyond the control of the respondent. That having knowledge of the existing delay, the complainants willingly and voluntarily entered into the agreement for sell and the transfer documents thereof leading to their nomination. Accordingly, the present complaint is liable to be dismissed.
- IX. Furthermore, the delivery of possession was also subject to the *force majeure* circumstances as under Clause 10(b)(i) and Clause 26 of the Buyer's Agreement. 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 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 project became scarce. Further, the respondent faced 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.
- X. That the respondent applied for Occupation Certificate in respect of the unit on 29.06.2017 and the same was thereafter issued on 10.01.2018. That it is

further submitted that on the receipt of occupation certificate from the competent authorities, the respondent issued an intimation of possession on 20.03.2018 duly intimating the complainants about the receipt of the occupation certificate and procedure of handing over the possession of the unit. Thereafter, an indemnity cum undertaking for possession of the said unit was executed between the complainants and the respondent for use and occupation of the said unit on 06.06.2018 whereby the complainants have declared and acknowledged that they have no ownership right, title or interest in any other part of the project except in the unit area of the unit. The complainants have preferred the present complaint on absolutely false and extraneous grounds in order to needlessly victimize and harass the respondent. The conveyance deed was executed in favour of the complainants on 22.02.2019. सत्यमेव जयते

- XI. That the present claim is barred by limitation, moreover, after the execution of the Conveyance Deed, the contractual relationship between the parties stands fully satisfied and comes to an end. That the complainants seek relief against preferential location charges having been paid. However, the same can also not be considered at this instance, as the complainants have been enjoying the unit for almost 4 years.
- XII. That the respondent has credited early payment rebate of Rs.26,174/- and EDC interest of Rs.84,515/- and any delayed interest, if any has to be calculated only on the amount deposited by the complainants towards the basic principal amount of the unit and not on any amount credited by the respondent, or any payment made by the complainants towards Delayed Payment Charges (DPC) or any Taxes/Statutory payments, etc.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be

decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

8. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

E. I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

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

11. So, in view of the provisions of the Act quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter.

F. Findings on the objections raised by the respondent.

F. I Whether the complainants can claim delayed possession charges after execution of the conveyance deed?

12. The respondent stated that the conveyance deed of the unit has already been executed in favour of the complainants on 22.02.2019 and the transaction between the parties stands concluded upon the execution of conveyance deed.
13. The respondent has argued that upon the execution of the conveyance deed, the relationship between the parties is considered concluded, precluding any further claims or liabilities by either party. Consequently, the complainant is barred from asserting any interest in light of the circumstances of the case.
14. In order to comprehend the relationship between the allottee and the promoter, it is essential to understand the definition of a "deed." A deed is a formal, written document that is executed, signed, and delivered by all parties involved in the contract, namely the buyer and the seller. It is a legally binding document that incorporates terms enforceable by law. For a sale deed to be valid, it must be written and signed by both parties. Essentially, a conveyance deed involves the seller transferring all rights to legally own, retain, and enjoy a particular asset, whether immovable or movable. In the present case, the asset in question is immovable property. By signing a conveyance deed, the original owner transfers all legal rights pertaining to the property to the buyer in exchange for valid consideration, typically monetary. Thus, a "conveyance deed" or "sale deed" signifies that the seller formally transfers all authority and ownership of the property to the buyer.
15. That the execution of a conveyance deed transfers only the title and interest in the specified immovable property (in this case, the allotted unit). However, the conveyance deed does not terminate the relationship

between the parties or absolve the promoter of their obligations and liabilities concerning the unit, despite the transfer of title and interest to the allottee upon execution of the conveyance deed.

16. The allottees have invested their hard-earned money and there is no doubt that the promoter has been enjoying benefits of and the next step is to get their title perfected by executing the conveyance deed which is the statutory right of the allottees. Also, the obligation of the developer-promoter does not end with the execution of a conveyance deed. Therefore, in furtherance to the Hon'ble Apex Court judgement and the law laid down in case titled as *Wg.Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd. (now known as BEGUR OMR Homes Pvt. Ltd.) and Ors. (Civil appeal no. 6239 of 2019) dated 24.08.2020*, the relevant paras are reproduced herein below:

"34 The developer has not disputed these communications. Though these are four communications issued by the developer, the appellants submitted that they are not isolated aberrations but fit into the pattern. The developer does not state that it was willing to offer the flat purchasers possession of their flats and the right to execute conveyance of the flats while reserving their claim for compensation for delay. On the contrary, the tenor of the communications indicates that while executing the Deeds of Conveyance, the flat buyers were informed that no form of protest or reservation would be acceptable. The flat buyers were essentially presented with an unfair choice of either retaining their rights to pursue their claims (in which event they would not get possession or title in the meantime) or to forsake the claims in order to perfect their titles to the flats for which they have paid valuable consideration. In this backdrop, the simple question which we need to address is whether a flat buyer who espouses a claim against the developer for delayed possession can as a consequence of doing so be compelled to defer the right to obtain a conveyance to perfect their title. It would, in our view, be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, the purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance to forsake the right to claim compensation. This basically is a position in which the NCDRC has espoused. We cannot countenance that view.

17. The Authority has already taken a view in Cr. No. 4031/2019 and others titled as *Varun Gupta V/s Emaar MGF Land limited and others* and observed that the execution of a conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the subject unit and upon taking possession, and/or

executing conveyance deed, the complaints never gave up their statutory right to seek delayed possession charges as per the provisions of the said Act.

18. Upon reviewing all relevant facts and circumstances, the Authority determines that the complainants/allottees retain the right to seek compensation for delays in possession from the respondent-promoter, despite the execution of the conveyance deed.

F.II Whether the complaint is barred by limitation or not?

19. In the present complaint, the buyer's agreement was executed on 09.05.2011 between the original allottees and the respondent. The unit was endorsed in favour of the complainants on 22.03.2012. As per clause 10 (a) of the agreement, the respondent was to offer the possession of the unit to the allottees by 09.08.2015. The respondent is also entitled to the grace period of 3 months. Thus, the due date comes out to be 09.11.2015.
20. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the Authority has observed that according to the terms of the agreement, possession of the unit was to be offered within 36 months from the date of start of construction plus an additional 3 months grace period is allowed to the respondent, in terms of the agreement. Therefore, the due date for possession, considering the grace period was 09.11.2015. The respondent obtained the occupation certificate for the relevant tower on 10.01.2018. An offer of possession was made to the complainants on 20.03.2018, and the unit was formally handed over on 03.07.2018, as indicated by the handover letter dated 03.07.2018.
21. The Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Authority Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be

guided by the principle of natural justice. It is universally accepted maxim and the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.

22. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in **MA NO.21 of 2022 of Suo Moto Writ Petition Civil No.3 of 2020** have held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
23. In the present matter the cause of action arose on 20.03.2018 when the offer of possession was made by the respondent. The complainants have filed the present complaint on 25.01.2023, the Authority is of the view that the present complaint has been filed within a reasonable time period and is not barred by the limitation.

F.III. Objection regarding force majeure circumstances.

24. The respondent-promoter has raised a contention that the handover of the unit was delayed due to force majeure conditions such as various orders passed by the National Green Tribunal, Environment Pollution (Prevention & Control) Authority and stoppage of work due to the order of various authorities. Since there were circumstances beyond the control of respondent, so taking into consideration the above-mentioned facts, the respondent be allowed the period during which his construction activities came to stand still, and the said period be excluded. The Authority is of the

view that though there have been various orders issued to curb the environment pollution, but these were for a short period of time. So, the circumstances/conditions after that period can't be taken into consideration for delay in completion of the project.

F.III. Objection regarding the complainants being investors.

25. The respondent has taken a stand that the complainants are investors and not consumers and therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The Authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter 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 apartment buyer's agreement, it is revealed that the complainants are buyer and they have paid total price of Rs.1,00,31,895/- to the promoter towards purchase of an apartment 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;"

26. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the Buyer's agreement executed between the respondent and complainants, it is crystal clear that they are allottee(s) as the subject unit was allotted to them by the respondent. The concept of investor is not defined or referred 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 promoter that the allottees being investors and thus not entitled to protection of this Act also stands rejected.

G. Findings regarding relief sought by the complainants:

G. I Direct the respondent to pay delayed possession charges from the due date of handing over possession till actual handing over possession at the prescribed rate of interest.

27. In the present complaint, the complainants intends to continue with the project and are seeking possession of the unit and delayed possession charges as per section 18(1) of the Act and the same is reproduced below for ready reference:

"Section 18: - Return of amount and compensation

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

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

(Emphasis supplied)

28. Clause 10(a) of the Buyer's Agreement (in short, the agreement) dated 09.05.2011 provides for handing over possession and the same is reproduced below:

10(a) Time of handing over the Possession

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

[Emphasis supplied]

29. The Buyer's agreement was executed on 09.05.2011. As per clause 10 (a) of the agreement, the respondent was to offer the possession of the unit to the allottees within 36 months from the date of commencement of construction. The date of commencement of construction of the unit is 09.08.2012 as evident from the Statement of accounts annexed at page no. 115 of reply. Thus, the Authority have calculated 36 months from the date of commencement of construction, also the grace period of 3 months is allowed to the respondent/promoter. Therefore, the due date comes out to be 09.11.2015.

30. **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.

31. 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.
32. 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., 29.01.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
33. 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;"*
34. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the Authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. The Authority has observed that the Buyer's Agreement was executed on 09.05.2011 between the original allottees and the respondent. The unit was thereafter endorsed in favour of the

complainants on 22.03.2012. The possession of the subject unit was to be offered within a period of 36 months from the date of commencement of construction plus a grace period of 3 months. The Authority calculated due date of possession from the date of commencement of construction i.e., 09.08.2012 along with a grace period of three months which comes out to be 09.11.2015. The occupation certificate in respect to the subject unit has been obtained by the respondent on 10.01.2018 from the competent authorities and the offer of possession was made to the complainants on 20.03.2018. The respondent has failed to handover possession of the subject unit on the due date.

35. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The Authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainants as per the terms and conditions of the Buyer's Agreement dated 09.05.2011 executed between the parties. Further, the Authority observes that the respondent obtained the occupation certificate on 10.01.2018 and offered possession to the complainants on 20.03.2018 and the conveyance deed was executed on 22.02.2019.
36. In the reply, the respondent have made a submission that the respondent has paid Rs.26,174/- against early payment rebate and EDC interest of Rs.84,515/- and the same is reflected in the Statement of account and if any interest is payable to the complainants it has to be calculated only on the amount deposited by the complainants towards the basic principal amount of the unit and not on any amount credited by the respondent.
37. The Authority is of the view that an allottee becomes entitled to delayed payment interest only on the amount actually paid by the allottee as the

allottee has suffered pecuniary loss only on this amount. The Authority further relies on the Judgement dated 15.03.2022, passed by the Hon'ble Haryana Real Estate Appellate Tribunal, Chandigarh in appeal bearing no. **234 of 2021 titled as Emaar MGF Land Ltd. Versus Anubhav Gupta**, and the relevant portion is reproduced for ready reference:-

43. *The delayed possession interest is not payable on compensation already credited in the account of the respondent-allottee. This plea of the appellant is correct and logical. Therefore, in view of the aforesaid discussions, it is held that the appellant is liable to pay the interest as delayed possession charges on the amount i.e., (Rs.1,15,02,318/- minus Rs.6,23,447/- = Rs.1,08,78,871/-) from 01.03.2016 till the handing over of the possession.*
45. *Thus, keeping in view our aforesaid discussion, the appeal filed by the appellant is partly allowed as per the above said observations and the impugned order of Authority is modified to the extent that the appellant shall pay the delayed possession interest @9.3% per annum on the amount of Rs.1,08,78,871/- from the due date of possession i.e., 01.03.2016 till handing over of the possession. The interest on the amount, if any, which has been paid after the due date of possession i.e., 01.03.2016 shall be payable from the date on which the amount has been paid till the handing over possession.*
38. In light of the above, the Authority is of the view that the allottee is liable for delayed possession charges on the amount actually paid by the complainant and not on the compensation/rebate given by the respondent company.
39. Accordingly, the non-compliance of the mandate contained in section 11(4) (a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to delay possession charges at rate of the prescribed interest @ 11.10% p.a. w.e.f. 09.11.2015 till the date of offer of possession plus two months after obtaining the occupation certificate, after adjustment/deduction of the amount already paid if any towards delay in handing over of possession as per proviso to section 18(1) of the Act read with rule 15 of the rules.

G.II. Direct the respondent to return the Central greens Preferential Location Charges (PLC) of Rs.6,65,000/-.

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

40. The financial liabilities between the allottee and the promoter comes to an end after the execution of the conveyance deed. The complainants could have asked for the claim before the conveyance deed got executed between the parties. Therefore, after execution of the conveyance deed the complainants-allottees cannot seek refund of charges other than statutory benefits if any pending. Once the conveyance deed is executed and accounts have been settled, no claims remains. So, no directions in this regard can be effectuated at this stage.

H. Directions of the authority: -

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

- i. The respondent/promoter shall pay interest at the prescribed rate i.e., 11.10% for every month of delay on the amount paid by the complainants from the due date of possession i.e., 09.11.2015 till the date of offer of possession plus two months after obtaining the occupation certificate, after adjustment/deduction of the amount already paid if any towards delay in handing over of possession as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- ii. The respondent is directed to pay arrears of interest accrued, if any , after adjustment in statement of account, within 90 days from the date of this order as per rule 16(2) of the Act.

42. Complaint as well as applications, if any, stands disposed of.
43. File be consigned to the registry

Dated: 29.01.2025


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



HARERA
GURUGRAM