

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

Complaint no. : 53 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:

| S.No. | Particulars | Details |
|-------|--|--|
| 1. | Name of the project | "Palm Garden Centre", Sector-83, Village-Khaerki daula, Gurugram, Haryana. |
| 2. | Project Area | 21.90 acres. |
| 3. | Nature of project | Commercial complex. |
| 4. | DTCP license no. | Licence no.- 108 of 2010 Dated 18.12.2010 |
| 5. | RERA registered | Registered vide no.330 of 2017 Dated-24.10.2017, |
| 6. | Unit no. | PGC-GF-15 (As on page no. 42 of complaint) |
| 7. | Unit area | 247.29 sq.ft. [Super-area] (As on page no. 42 of complaint) |
| 8. | Welcome letter | 20.05.2015 (As on page no. 32 of complaint) |
| 9. | Provisional allotment letter | 20.05.2015 (As on page no. 35 of complaint) |
| 10. | Date of execution of buyer's agreement dated | 05.06.2015 (As on page no. 39 of complaint) |

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| 11. | Possession clause | <p>Clause 14 POSSESSION</p> <p>(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 allotment 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 120 days after the expiry of the said period of 36 months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project. [Emphasis supplied] (As on page no. 53 of complaint)</p> |
| 12. | Due date of possession | 20.09.2018 (Calculated 36 months from date of allotment i.e., 20.05.2015 + 120 days) |
| 13. | Sale consideration | Rs.23,82,187/- (As per S.O.A dated 29.05.2023 on page no. 86 of reply) |
| 14. | Total amount paid by the complainant | Rs.23,88,501/- (As per S.O.A dated 29.05.2023 on page no. 86 of reply) |

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| 15. | Payment requests | 31.10.2019 26.11.2019 (As on page no.-75-77 of reply) |
| 16. | Occupation certificate | 17.10.2019 (As on page no. 79 of reply) |
| 17. | Offer of possession | 26.02.2020 (As on page no. 105 of complaint) |
| 18. | Indemnity cum undertaking | 27.07.2020 (As on page no. 88 of reply) |
| 19. | Unit hand over letter | 18.08.2020 (As on page no. 111 of complaint) |
| 20. | Conveyance deed | 29.10.2020 (As on page no. 96 of reply) |

B. Facts of the complaint

3. The complainants have made the following submissions: -

- I. That somewhere around 2015, the respondent advertised about its new project namely "Palm Garden Centre" situated in Sector-83, Gurgaon. The respondent painted a rosy picture of the project in their advertisement making tall claims. Believing the representations of the respondent and on the lookout for a commercial space for himself, the complainants booked a commercial unit in the said project on 14.05.2015 by making a payment of Rs.2,00,000/-.
- II. That on 20.05.2015, the respondent sent a provisional allotment letter thereby allotting a unit bearing no PGC-GF-15 admeasuring 22.97 sq. mtrs in the said project at a total basic price of Rs.19,78,320/-. The complainant

and the respondent entered into a Builder Buyer Agreement on 05.06.2015 for a total sale consideration of Rs.21,74,777/-

- III. Believing on the respondent's representation, the complainants kept on making payment as and when demanded by the respondent. Till 20.05.2018 i.e. the due date of possession of the unit, the complainants have paid a total sum of Rs.8,79,814 /- towards the unit in question as and when demanded by the respondent against a total sale consideration of Rs.23,82,188/-.
- IV. As per Clause 14 (a) of the Buyer's agreement, the respondent proposed to hand over the possession of the unit within a period of 36 months from 20.05.2015 i.e. the date of allotment subject to timely compliance of the provisions of the agreement by the allottee. However, the respondent failed in handing over possession in terms with the agreement. That the complainants contacted the respondent in January, 2018 in order to enquire about the date of handing over of possession but to the utter shock of the complainants, the project was nowhere near completion. The complainants due to the delay in handing over of possession requested the respondent to make the payment of delay possession charges on account of delay in offer of possession but to no avail.
- V. That the complainants received a demand letter of Rs.12,91,827/- against the remaining sale consideration on 22.11.2019 and the demand was fulfilled by the complainants by making the said payment. It is pertinent to mention here that the entire sale consideration was paid by the complainant as on 22.11.2019.
- VI. That the respondent kept on demanding money and the same was demanded without attaining the stage of construction as per the payment

plan but the complainants left with no other option but to make the payment on time as per demand raised by the respondent.

- VII. That the complainant on 26.02.2020 received the offer of possession of the unit after a delay of more than 2 years from the due date of possession as per the builder buyer agreement. The respondent fraudulently kept the money of the complainants for so long and never paid any interest for the delay caused in handing over possession of the unit. The complainants after receiving the offer of possession approached the respondent to take the possession but the project was nowhere near completion and was full of irregularities.
- VIII. That subsequently, the complainants kept making calls, requests and through several meetings and kept inquiring as to when will the respondent handover the unit after removing all irregularities in the unit but the respondent's representatives never furnished a concrete answer to the same. However, the complainants left with no other option, took the possession of the unit on 18.08.2020.
- IX. That lately it has been transpired to the complainants that the project is having lot of significant and staggering deficiencies that have irrevocably impacted the living quality of the complainants and the other allottees. The complainants have been severely traumatized by the gross deficiency in the project and the unit.
- X. That the aforesaid irregularities clearly elucidate the misconduct on the part of respondent and that the respondent clearly violated its brochures, advertisements and representations made to genuine innocent home buyers. This is clear violation of Section 12 of the Act, 2016.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- Direct the respondent to pay delayed possession charges from the due date of handing over possession till actual handing over possession at the prescribed rate of interest.
 - Direct the respondent to charge delay payment charges, if any, at equitable rate of interest.
5. On the date of hearing, the Authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds: -
- That the complainants are not "Allottees" but Investors who have booked the unit in question as a speculative investment in order to earn rental income/profit from its resale and not for the purpose of self-use as their residence. Therefore, no equity lies in favor of the complainants.
 - That the complainants approached the respondent and expressed interest in booking an apartment in the residential group housing colony with convenient shopping known as "Palm Garden Centre" situated in Sector 83, Village Kherki Dhaura, Tehsil & District Gurgaon, Haryana. Prior to the booking, the complainants conducted extensive and independent enquiries in regard to the project and only after being fully satisfied on all aspects, they took an independent and informed decision uninfluenced in any manner by the respondent to book the unit.
 - Pursuant thereto, a commercial unit bearing no PGC-GF-15, located on the ground floor, admeasuring 247.29 sq. ft. was allotted vide provisional allotment letter dated 20.05.2015. The complainants consciously and willfully opted for a possession-linked payment plan for remittance of sale consideration for the unit. The respondent had no reason to suspect the

- bonafide* of the complainants and proceeded to allot the unit in question in their favor.
- IV. Thereafter, a Buyer's Agreement dated 05.06.2015 was executed between the complainants and the respondent. It is pertinent to mention that the Buyer's Agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on the parties.
- V. That as per clause 14(a) of the Buyer's Agreement, the due date of possession was subject to the allottees having complied with all the terms and conditions of the Buyer's Agreement. It is submitted that the remittance of all amounts due and payable by the complainants under the Buyer's Agreement was of the essence. It has also been provided therein that the date for delivery of possession of the unit would stand extended in the event of the occurrence of the facts/reasons beyond the power and control of the respondent. Since the complainants have defaulted in timely remittance of payments as per the schedule of payment, the date of delivery of possession is not liable to be determined in the manner sought to be done by the complainants.
- VI. That the *bonafide* of the respondent is also essential to be highlighted at this instance, who had served request letters at every stage and reminder in case of non-payment; one such occasion was when the payment demand on application for Occupation Certificate was made on 31.10.2019. However, the complainants failed to make the timely payment and thus a "Payment Request Reminder-1" was served to the complainants on 25.11.2019.
- VII. That furthermore, the delivery of possession was also subject to the *force majeure* circumstances as under Clause 14(b)(i) and Clause 31 of the Buyer's Agreement. It is to be noted that the development and implementation of the project have been hindered on account of several orders/directions passed by various authorities/forums/courts, before

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

| S. no. | Date of Order | Directions | Period of Restriction | Days affected | Comments |
|--------|----------------------------|--|---|---------------|---|
| 1. | 07.04.2015 | National Green Tribunal had directed that old diesel vehicles (heavy or light) more than 10 years old would not be permitted to ply on the roads of NCR, Delhi. It has further been directed by virtue of the aforesaid order that all the registration authorities in the State of Haryana, UP and NCT Delhi would not register any diesel vehicles more than 10 years old and would also file the list of vehicles before the tribunal and provide the same to the police and other concerned authorities. | 7 th of April, 2015 to 6 th of May, 2015 | 30 days | The aforesaid ban affected the supply of raw materials as most of the contractors/building material suppliers used diesel vehicles more than 10 years old. The order had abruptly stopped movement of diesel vehicles more than 10 years old which are commonly used in construction activity. The order had completely hampered the construction activity. |
| 2. | 19 th July 2016 | National Green Tribunal in O.A. No. 479/2016 had directed that no stone crushers be permitted to operate unless they operate consent from the State Pollution Control Board, no objection from the concerned authorities and have the Environment Clearance from the competent Authority. | Till date the order in force and no relaxation has been given to this effect. | 30 days | The directions of NGT were a big blow to the real estate sector as the construction activity majorly requires gravel produced from the stone crushers. The reduced supply of gravels directly affected the supply and price of ready mix concrete required for |

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| | | | | | construction activities. |
| 3. | 8 th Nov, 2016 | National Green Tribunal had directed all brick kilns operating in NCR, Delhi would be prohibited from working for a period of 2016 one week from the date of passing of the order. It had also been directed that no construction activity would be permitted for a period of one week from the date of order. | 8 th Nov, 2016 to 15 th Nov, 2016 | 7 days | The bar imposed by Tribunal was absolute. The order had completely stopped construction activity. |
| 4. | 7 th Nov, 2017 | Environment Pollution (Prevention and Control Authority) had directed to the closure of all brick kilns, stones crushers, hot mix plants, etc. with effect from 7 th Nov 2017 till further notice. | Till date the order has not been vacated | 90 days | The bar for the closure of stone crushers simply put an end to the construction activity as in the absence of crushed stones and bricks carrying on of construction were simply not feasible. The respondent eventually ended up locating alternatives with the intent of expeditiously concluding construction activities but the previous period of 90 days was consumed in doing so. The said period ought to be excluded while computing the alleged delay |

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| | | | | | | attributed to the Respondent by the Complainants. It is pertinent to mention that the aforesaid bar stands in force regarding brick kilns till date is evident from orders dated 21 st Dec, 19 and 30 th Jan, 20. |
| 5. | 9 th Nov 2017 and 17 th Nov, 2017 | National Green Tribunal has passed the said order dated 9 th Nov, 2017 completely prohibiting the carrying on of construction by any person, private, or government authority in NCR till the next date of hearing. (17 th of Nov, 2017). By virtue of the said order, NGT had only permitted the competition of interior finishing/interior work of projects. | The order dated 9 th Nov, 17 was vacated vide order dated 17 th Nov, 17. | 9 days | | On account of passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period. |
| | | | Total days | 166 days | | |

VIII. That the respondent applied for Occupation Certificate in respect of the said unit on 11.02.2019 and the same was granted by the competent authorities on 17.10.2019.

IX. That thereafter, the complainants were offered possession of the unit through a letter of offer of possession on 26.02.2020. The complainants were called upon to remit the balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for the handover of the unit in question to the complainants. It is

submitted that the complainants delayed the procedure of taking the possession of the said unit on their own account.

- X. That the allegations of the complainants that possession was to be delivered by 20.05.2018 are wrong, *malafide*, and result of an afterthought in view of the fact that the complainants had made payments to the respondent even after 20.05.2018. If there was infact a delay in delivery of project as alleged by the complainants, then the complainants would not have remitted instalments after 20.05.2018.
- XI. That the complainants finally took the possession of the unit on 18.08.2020 and consequently, the conveyance deed was executed on 29.10.2020. Moreover, after the execution of the Conveyance deed, the contractual relationship between the parties stands fully satisfied and comes to an end and there remains no claim/ grievance of the complainants with respect to the Buyer's Agreement or any obligation of the parties thereunder. That after the execution of the conveyance deed, the parties are estopped from making any claims at this instance.
- XII. That the respondent has paid Rs.43,567/- against anti-profiting and without prejudice to the rights of the respondent, 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 nay amount credited by the respondent.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

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

E. I Territorial jurisdiction

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

E. II Subject matter jurisdiction

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

Section 11(4)(a)

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

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

F. Findings on the objections raised by the respondent.

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

12. The respondent stated that the conveyance deed of the unit has already been executed in favour of the complainants on 29.10.2020 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. Objections regarding force majeure circumstances.

19. The respondent-promoter has raised a contention that the handover of the unit was delayed due to force majeure conditions such as various orders passed by the National Green Tribunal, Environment Pollution (Prevention & Control) Authority, shortage of labour and stoppage of work due to the order of various authorities. Since there were circumstances beyond the control of respondent, so taking into consideration the above-mentioned facts, the respondent be allowed the period during which his construction activities came to stand still, and the said period be excluded. The Authority is of the view that though there have been various orders issued to curb the environment pollution, but these were for a short period of time. So, the circumstances/conditions after that period can't be taken into consideration for delay in completion of the project.

F.III. Objection regarding the complainants being investors.

20. 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.23,88,501/- 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;"

21. 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.

22. 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)

23. Clause 14(a) of the Buyer's Agreement (in short, the agreement) dated 05.06.2015 provides for handing over possession and the same is reproduced below:

14(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 allotment 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 120 days after the expiry of the said period of 36 months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project.

[Emphasis supplied]

24. The Buyer's agreement was executed on 05.06.2015. As per clause 14 (a) of the agreement, the respondent was to offer the possession of the unit to the

allottees within 36 months from the date of allotment. The date of allotment of the unit in favour of the complainants is 20.05.2015 annexed at page no. 35 of complaint. Thus, the Authority have calculated 36 months from the date of allotment of the unit, also the grace period of 120 days is allowed to the respondent/promoter. Therefore, the due date comes out to be 20.09.2018.

25. **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.

26. 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.
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., 29.01.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.

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28. 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. 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 05.06.2015 between the complainants and the respondent. The possession of the subject unit was to be offered within a period of 36 months from the allotment of the unit plus a grace period of 120 days . The Authority calculated due date of possession from the date of allotment i.e., 20.05.2015 along with a grace period of 120 days which comes out to be 20.09.2018. The occupation certificate in respect to the subject unit has been obtained by the respondent on 17.10.2019 from the competent authorities and the offer of possession was made to the complainants on 26.02.2020. The respondent has failed to handover possession of the subject unit on the due date.

30. 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 05.06.2015 executed between the parties. Further, the Authority observes that the respondent obtained the occupation certificate on 17.10.2019 and offered possession to the complainants on 26.02.2020 and the conveyance deed was executed on 29.10.2020.
31. In the reply, the respondent have made a submission that the respondent has paid Rs.43,567/- against anti-profiting 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.
32. 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.
33. 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 the compensation/rebate given by the respondent company.
34. 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. 20.09.2018 till the date of offer of possession plus two months after obtaining the occupation certificate, as per section 18(1) of the Act of 2016 read with rule 15 of the rules on the amount paid by the complainants.

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

35. 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: -

36. 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., 20.09.2018 till the date of offer of possession plus 2 months 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,

37. Complaint stands disposed of.

38. File be consigned to the registry

Dated: 29.01.2025

(Ashok Sangwan)

Member

Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM