

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

Complaint no.: 6030 of 2022  
Date of first hearing: 24.11.2022  
Date of Order: 06.03.2025

Ganesh Kumar Dwivedi  
**R/o:** - H-705, Emaar Palm Drive, Golf Course  
Extension Road, Sector-66, Gurgaon-122018

**Complainant**

Versus

Emaar MGF Land Ltd. presently known as  
Emaar India Ltd.  
**Regd. office at:** Emaar MGF Business Park,  
Mehrauli Gurgaon Road, Sikandarpur Chowk,  
Sector-28 Gurugram-122018

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Shri Gaurav Rawat (Advocate)  
Shri Ishaan Dang (Advocate)

Complainant  
Respondent

**ORDER**

1. This complaint has been filed by the complainants/allottee 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*.

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**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. No.	Particulars	Details
1.	Name of the project	"Premier Terraces at Palm Drive", Sector 66, Gurugram, Haryana
2.	Nature of project	Group housing colony
3.	DTCP License no.	i. 228 of 2007 dated 27.09.2007 valid up to 26.09.2019 ii. 93 of 2008 dated 12.05.2008 valid up to 11.05.2020
4.	Unit no.	H-705, Tower-H, 7 <sup>th</sup> floor (As per page no. 52 of the complaint)
5.	Unit area	1950 sq. ft. (Super Area) (As per page no. 52 of the complaint)
6.	Revised unit area	1996.17 sq. ft. (Super Area) (As on page no. 137 of the reply) (Note: Super Area was increased to 1996.17 sq. ft. from 1950 sq. ft.)
7.	Allotment letter	11.02.2008 (As per page no. 40 of the complaint)
8.	Date of execution of buyer's agreement	05.03.2008 (As per page no. 49 of the complaint)
9.	Date of tripartite agreement	28.12.2017 (As per page no. 167 of the reply)
10.	Possession clause	<b>14. POSSESSION</b> <b>(a) Time of handing over the Possession</b> <i>Subject to terms of this clause and subject to the Apartment Allottee having complied with all the terms and conditions of this agreement, and not being in default under any of the provisions of this agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Apartment/Villa/Penthouse by</i>

		<p><b>December 2010.</b> The Apartment Allottee agrees and understands that the Company shall be entitled to a grace period of ninety (90) days, for applying and obtaining the occupation certificate in respect of the Group Housing Complex.</p> <p>(Emphasis supplied)</p> <p>(As on page no. 66 of the complaint)</p>
11.	Due date of possession	<p>March 2011</p> <p>(As mentioned in buyer's agreement plus grace period of 90 days)</p>
12.	Total sales consideration	<p>Rs.1,02,91,890/-</p> <p>(As per schedule of payments on page no. 81 of the complaint)</p>
13.	Amount paid by the complainant	<p>Rs.1,15,81,610/-</p> <p>(As per SOA on page no. 58 of the reply)</p>
14.	Nomination of unit in the name of complainant only	<p>09.01.2018</p> <p>(As per page no. 94 of the complaint)</p>
15.	Occupation certificate	<p>25.01.2018</p> <p>(As per page no. 44 of the reply)</p>
16.	Offer of possession	<p>08.03.2018</p> <p>(As per page no. 95 of the complaint)</p>
17.	Indemnity cum undertaking	<p>05.05.2018</p> <p>(As per page no. 133 of the reply)</p>
18.	Unit handover letter	<p>23.06.2018</p> <p>(As per page no. 137 of the reply)</p>
19.	Conveyance deed	<p>06.09.2018</p> <p>(As per page no. 111 of the complaint)</p>

### B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
  - I. That the complainant, Ganesh Kumar Dwivedi is a law abiding citizen and residing at R/o H-705, Emaar Palm Drive, Golf Course Extension Road, Sector-66, Gurgaon-122018.
  - II. That in 2007, the respondent company issued an advertisement announcing a group housing colony project called "Premier Terraces at Palm Drive' at Sector - 66, Gurugram was launched by Emaar MGF Land Ltd.



on the 45.48 acres of land, under the license no. DS-2007/24799 of 2007 dated 27.09.2007, issued by DTCP, Haryana and thereby invited applications from prospective buyers for the purchase of unit in the said project. The respondent confirmed that the project had got building plan approval from the authority.

- III. That the complainant while searching for a flat/accommodation was lured by such advertisements and calls from the brokers of the respondent for buying a house in their project. The respondent company told the complainant about the moonshine reputation of the company and the representative of the respondent company made huge presentations about the project mentioned above and also assured that they have delivered several such projects in the National Capital Region.
- IV. That relying on various representations and assurances given by the respondent company and on belief of such assurances, the complainant booked a unit in the project by paying an amount of Rs.10,00,000/- towards the booking of the said unit bearing no. TPD H—F07-705, 7<sup>th</sup> Floor, Tower H in Sector 66, having super area measuring 1950 sq. ft. to the respondent and the same was acknowledged by the respondent.
- V. That the respondent confirmed the booking of the unit to the original allottee providing the details of the project for a total sale consideration of the unit i.e. Rs.1,02,91,890/- which includes basic price, plus EDC and IDC, two car parking charges and other specifications of the allotted unit and provided the time frame within which the next instalment was to be paid.
- VI. That a buyer's agreement was executed between the complainant and respondent on 05.03.2008. As per clause 14(a) of the buyer's agreement, the respondent had to deliver the possession of the unit by December 2010 with a grace period of 90 days for applying and obtaining the occupation

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certificate. The complainant was also handed over one detailed payment plan which was construction linked plan. It is unfortunate that the dream of owning a unit of the complainant was shattered due to dishonest, unethical attitude of the respondent.

- VII. That as per the demands raised by the respondent, based on the payment plan, the complainant already paid a total sum of Rs.1,15,26,892/- towards the said unit against total sale consideration of Rs.1,02,91,890/-.
- VIII. That the payment plan was designed in such a way to extract maximum payment from the buyers. The complainant approached the respondent and asked about the status of construction and also raised objections towards non-completion of the project. It is pertinent to state herein that such arbitrary and illegal practices have been prevalent amongst builders before the advent of Act of 2016, wherein the payment/demands/ etc. have not been transparent and demands were being raised without sufficient justifications and maximum payment was extracted just raising structure leaving all amenities/finishing/facilities/common area/road and other things promised in the brochure, which counts to almost 50% of the total project work.
- IX. That the respondent despite having made multiple tall representations to the complainant, the respondent has chosen deliberately and contemptuously not to act and fulfil the promises and have given a cold shoulder to the grievances raised by the cheated allottees. The respondent have completely failed to honour their promises and have not provided the services as promised and agreed through the brochure, buyer's agreement and the different advertisements released from time to time.
- X. That the respondent has played a fraud upon the complainant and cheated them with a false promise to complete the construction over the project site



within stipulated period. The respondent had further malafidely failed to implement the buyer's agreement executed with the complainants. Hence, the complainant being aggrieved by the offending misconduct, fraudulent activities, deficiency and failure in service of the respondent is filing the present complaint.

- XI. That the complainant has suffered a loss and damage in as much as they had deposited the money in the hope of getting the said unit for residential purposes. He has not only been deprived of the timely possession of the said unit but the prospective return he could have got if he had invested in fixed deposit in bank. Therefore, the compensation in such cases would necessarily have to be higher than what is agreed in the buyer's agreement.
- XII. That the complainant after many request and emails; received the offer of possession on 08.03.2018. It is pertinent to note here that along with the above said letter of offer of possession respondent raised several illegal demands on account of the following which are actually not payable as per the builder buyer's agreement.
- XIII. That offering possession by the respondent on payment of charges which the flat buyer is not contractually bound to pay, cannot be considered to be a valid offer of possession. It would be noticed from the details provided above that those charges were never payable by the complainant as per the agreement, by the complainant and hence the offer of possession.
- XIV. That the Palm Drive amenities are 24 X 7 Power Back up, 24 X 7 Security, Badminton Court, Basketball Court, Broadband Connectivity, Club House, Covered Parking, Creche, Gym, Health Facilities, Intercom Facility, Kids Play Area, Lawn Tennis Court, Maintenance Staff, Open Parking, Recreation Facilities, Religious Place, School, Servant Quarters, Shopping Arcade, Swimming Pool, Visitor Parking.



- XV. That the complainant requested the respondent to show/inspect the unit before complainant pay any further amount and requesting to provide the car parking space no. but the respondent failed to reply.
- XVI. That the respondent asked the complainant to sign the indemnity bond as pre-requisite condition for handing over of the possession. The complainant raised objection to above said pre-requisite condition of the respondent as no delay possession charges was paid to the complainant but respondent instead of paying the delay possession charges clearly refuse to handover to possession if the complainant do not sign the aforesaid indemnity bond. Further, the complainant left with no option instead of signing the same.
- XVII. That the complainant has never delayed in making any payment and have always made the payment rather much before the construction linked plan attached to the buyer's agreement. The allottee has approached the company with a request for payment of compensation, despite not making payments on time and on the assurance that he shall make the payment of the delay payment charges as mentioned above along with all other dues to the company.
- XVIII. That the complainant after many follow ups and reminders, and after clearing all the dues and fulfilling all one-sided demands and formalities as and when demanded by the respondent got the conveyance deed executed on 06.09.2018. While this sale deed acknowledges that the complainant have paid the total consideration of Rs.1,15,26,892/- towards full and final consideration of the said apartment and applicable taxes etc. it makes no provision for compensating the complainant for the huge delay in handing over the unit and project. The complainant was not given any opportunity to negotiate the terms of the said sale deed.

- XIX. That no negotiations were permitted in relation to the buyer's agreement dated 06.02.2008. The complainant was told that the sale deed will encompass all the relevant issues at hand. It is submitted that this agreement and various clauses therein amount to an unconscionable agreement containing terms that are so extremely unjust, or overwhelmingly one-sided in favour of the party who has the superior bargaining power, that they are contrary to good conscience.
- XX. That the respondent has arbitrarily demanded for payment of interest on account of delayed payment at the rate of 15%-24% whereas the compensation for delay stipulated for the buyers is merely Rs.5/- per sq. ft. The complainant is actually entitled to interest @ 9.30% per annum on the total sum paid by them.
- XXI. That the present complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the respondent in sale of their unit and the provisions allied to it. The modus operandi adopted by the respondent may be unique and innovative from the respondent's point of view but from the allottee's point of view, the strategies used to achieve its objective, invariably bears the irrefutable stamp of impunity and total lack of accountability and transparency, as well as breach of contract and duping of the allottee, be it either through not implementing the services/utilities as promised in the brochure or through not delivering the project in time.
- XXII. That the complainant is the one who has invested his life savings in the said project and is dreaming of a home for himself and the respondent has not only cheated and betrayed them but also used their hard-earned money for their enjoyment.

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- XXIII. The complainant after losing all the hope from the respondent company, having his dreams shattered of owning a flat & having basic necessary facilities in the vicinity of the project and also losing considerable amount, are constrained to approach this Hon'ble Authority for redressal of their grievance.
- XXIV. That the present complaint is within the prescribed period of limitation. The complainant has not filed any other complaint before any other forum against the erring respondent and no other case is pending in any other court of law.

**C. Relief sought by the complainant:**

4. The complainant has sought following relief(s):
  - I. Direct the respondent to pay the interest on the total amount paid by the complainant at the prescribed rate of interest as per the Act of 2016 from due date of possession till date of actual physical possession.
  - II. Direct the respondent to pay the balance amount due to the complainant from the respondent on account of the interest, as per the guidelines laid in the Act of 2016.
  - III. Direct the respondent company to set aside the one-sided indemnity bond get signed by the respondent from the complainant under undue influence.
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 not maintainable in law or on facts. The provisions of the Act of 2016 are not applicable to the project in question. The application for issuance of occupation certificate in respect of the unit



in question was submitted on 30.06.2017, i.e., well before the notification of the Rules, 2017. The occupation certificate has been thereafter issued on 25.01.2018, prior to notification of the Rules. Thus, the part of the project in which the unit in question is situated is not an 'ongoing project' under Rule 2(1)(o) of the Rules. The project has not been registered under the provisions of the Act. This Hon'ble Authority does not have the jurisdiction to entertain and decide the present complaint. The present complaint is liable to be dismissed on this ground alone.

- ii. That without prejudice to the foregoing, it is submitted 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.
- iii. That the complainant has no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 05.03.2008, as shall be evident from the submissions made in the following paragraphs of the present reply.
- iv. That the complainant prior to approaching the respondent, the complainant 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.

- v. That the complainant vide an application form dated 05.02.2008 applied to the respondent for provisional allotment of a unit in the project. The complainant in pursuance of the aforesaid application form, was allotted an independent unit bearing no. TPD H-F07-705 located on 7<sup>th</sup> floor in Tower H, in the project vide provisional allotment letter dated 11.02.2008. The complainant wilfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that he would remit every instalment on time as per the payment schedule. The respondent had no reason to suspect the bona-fides of the complainant and undertook to be bound by the terms and conditions of the application form.
- vi. That the rights and obligations of complainant as well as respondent are completely and entirely determined by the covenants incorporated in the buyer's agreement dated 05.03.2008 which continues to be binding upon the parties thereto with full force and effect. It is submitted that as per clause 14 of the buyer's agreement, the respondent had offered to deliver possession of the unit in December 2010 with 90 days of grace period subject to the allottee(s) having strictly complied with all terms and conditions of the buyer's agreement and not being in default of any provision of the buyer's agreement including remittance of all amounts due and payable by the allottee(s) under the agreement as per the schedule of payment incorporated in the buyer's agreement. It has also been provided therein that the date for delivery of possession of the unit would stand

extended in the event of occurrence of the facts/reasons beyond the power and control of the respondent. It is pertinent to mention that it was categorically provided in clause 14(b)(vi) that in case of any default/delay by the allottees in payment as per schedule of payment incorporated in the buyer's agreement, the date of handing over of possession shall be extended accordingly, solely on the respondent's discretion till the payment of all outstanding amounts to the satisfaction of the respondent.

vii. 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. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. It is further submitted that merely because the Act applies to ongoing projects which are registered with the authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainant for seeking interest cannot be called in to aid in derogation and in negation of the provisions of the buyer's agreement. The interest is compensatory in nature and cannot be granted in derogation and in negation of the provisions of the buyer's agreement. This is without prejudice to the submission of the respondent that the provisions of the Act are not applicable to the project in question. It is further submitted that the interest for the alleged delay demanded by the complainant is beyond the scope of the buyer's agreement.

viii. That the respondent had offered possession of the unit in question through letter of offer of possession dated 08.03.2018 to the complainant. The complainant was called upon to remit stamp and registration charges to complete the necessary formalities/documentation necessary for handover

of the unit to them. However, the complainant did not take any step to complete the necessary formalities or to pay the balance amount to be paid by him.

- ix. That the respondent has credited an amount of Rs.4,08,301/- and an amount of Rs.36,982/- on account of Early Payment Rebate to the account of the complainant as a gesture of goodwill. The aforesaid amount has been accepted by the complainant in full and final satisfaction of his alleged grievances and accordingly the complainant had executed the conveyance deed after receipt of the aforesaid amount. The instant complaint is nothing but a gross misuse of process of law.
- x. That after a delay of about three months the complainant executed the unit handover letter dated 23.06.2018 whereby the complainant took over peaceful and vacant physical possession of the unit in question after fully satisfying himself with regard to its measurements, location, dimension and development etc. It was further explicitly stated in the aforesaid letter that upon acceptance of possession the complainant would not be entitled to raise any claim of any nature whatsoever regarding any variation in the size, dimension, area, location or legal status of the unit in question. Therefore, the instant complaint is barred by estoppel.
- xi. That the complaint is barred by limitation. The complainant has alleged that the possession of the unit was to be given not later than December, 2010. Moreover, conveyance deed in respect of the unit in question had been consciously executed by the complainant on 06.09.2018. In any event, the complainant has stated that the respondent had purportedly refused to pay the so-called delayed possession charges to the complainant at the time of execution of the conveyance deed. Therefore, cause of action, if any, accrued



in favour of the complainant on 06.09.2018. Thus, the complaint seeking interest and compensation is barred by limitation.

- xii. That the allegations of the complainant that possession was to be delivered by December, 2010 are wrong, malafide and result of afterthought in view of the fact that the complainant and Mrs. Jyotsna Dwivedi had made several payments to respondent even after December, 2010. It is submitted if there was a delay in delivery of project as alleged by the complainant, then the complainant would not have remitted instalments after December, 2010. The allegations put forth by the complainant qua the respondent are absolutely illogical, irrational and irreconcilable in the facts and circumstances of the case. Institution of the present complaint after a lapse of more than 3 years from the date of registration of the conveyance deed in favour of the complainant is clearly indicative of the mischievous and malicious intent of the complainant. It is evident that the present complaint is nothing but an afterthought and an attempt to realise unjust gain and to cause undue loss to the respondent.
- xiii. That the present complaint is bad for non-joinder of SBI Bank as a party. The complainant had availed a housing loan from SBI Bank by mortgaging the unit question. The complainant is estopped from claiming any amounts from the respondent in view of the loan availed by the complainant. The complainant had specifically subrogated all his rights for refund/compensation/interest with respect to the unit in question in favour of SBI Bank. Therefore, prosecution of the instant complaint without making SBI Bank a party is bad in law.
- xiv. That all the demands raised by the respondent are strictly in accordance with the terms and conditions of the buyer's agreement duly executed between the parties. There is no default or lapse on the part of the



respondent. The allegations levelled by the complainant is totally baseless. Thus, it is most respectfully submitted that the present application deserves to be dismissed at the very threshold.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority:**

8. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority 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**

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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.*

11. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

**F. Finding on objections raised by the respondent:**

**F.I Objections w.r.t. application for issuance of occupation certificate of the project made prior to notification of the Rules.**

12. The respondent-promoter has raised the contention that the said project of the respondent is a pre-RERA project as the respondent has already applied for issuance of occupation certificate from the competent authority on 30.06.2017 i.e., before the notification of the Rules, 2017.
13. The authority is of the view that as per proviso to section 3 of Act of 2016, on-going projects on the date of commencement of this Act i.e., 01.05.2017 and for which completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of three months from the date of commencement of this Act and the relevant part of the Act is reproduced hereunder:

*Provided that projects that are on-going on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act.*

14. The legislation is very clear in this aspect that a project shall be regarded as an "on-going project" until receipt of completion certificate. Since, the completion certificate is yet to be obtained by the promoter-builder with regards to the concerned project, therefore the plea advanced by it is hereby rejected.

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

15. Another contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the buyer's agreement executed between the parties as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)** decided on 06.12.2017 which provides as under:

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

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

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

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

17. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself.

**F.III Objections regarding the complaint being barred by estoppel.**

18. The respondent has raised an objection that the instant complaint is barred by estoppel as upon execution of conveyance deed dated 06.09.2018, the complainant is now estopped from raising these belated claims/demands as he themselves had acknowledged and accepted that "that the vendee shall not raise any objection or make any claims on account of inconvenience, if any, which may be alleged to be suffered by the vendee due to such developmental/construction or its incidental/related activities."
19. The Authority observed that though the conveyance deed has been executed on 06.09.2018 but as per proviso to section 18 of the Act of 2016, if the allottee does not intend to withdraw from the project, he shall be paid,

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by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed. In the present complaint, as per the possession clause of the buyer's agreement, the due date of possession of the unit was March, 2011 but the same was offered on 08.03.2018 after a delay of almost 6 years. Therefore, the complainant is entitled for delay possession charges for the delayed period as statutory right of the complainant-allottee as per the provisions of section 18 of the Act of 2016. Thus, in view of the agreed terms and conditions duly agreed between the parties and the provisions of the Act of 2016, the contention of the respondent stands rejected.

**F.IV Objections regarding the complaint barred by Limitation Act, 1963.**

20. Another contention of the respondent is that the offer of possession was made in March 2018, the period of limitation has come to an end in the year March 2021. But the period from 15.03.2020 to 28.02.2022 was quoted as zero period vide order dated 10.01.2022 of the Hon'ble Apex Court in M.A. No. 21 of 2022 of suo-moto writ petition Civil No. 3 of 2020. And the complaint is within limitation after computing the said zero period allowed by the Supreme Court of India. Thus, the contention of promoter that the complaint is time barred by provisos of Limitation Act stands rejected.

**F.V Objections non-joinder of SBI Bank as a necessary party.**

21. The respondent has raised a contention that the filing of present complaint without making HDFC Bank as a party to the same is bad in eyes of law as the complainant has availed a loan of Rs.18,17,000/- from the financial institution. Though a tri-partite agreement dated 28.12.2017 was executed between the complainant, respondent and SBI bank and in lieu of the same the complainant has approached the financial institution to avail a loan of Rs.18,17,000/-. But no loan agreement has been executed between the



parties and no loan amount was disbursed by the bank to the complainant as per the documents available on record. Therefore, there is no privity of contract between the parties and there is no need to make the SBI bank a party to the present complaint. Thus, the contention of the promoter stands rejected.

**G. Finding on the relief sought by the complainant:**

**G.I Direct the respondent to pay the interest on the total amount paid by the complainants at the prescribed rate of interest as per the Act of 2016 from due date of possession till date of actual physical possession.**

**G.II Direct the respondent to pay the balance amount due to the complainants from the respondent on account of the interest, as per the guidelines laid in the Act of 2016.**

22. The above-mentioned reliefs sought by the complainant are taken together being inter-connected.

23. In the present complaint, the complainant intend 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."*

24. Clause 14(a) of buyer's agreement dated 05.03.2008 provides for handing over of possession and is reproduced below:

**14. POSSESSION**

**(a) Time of handing over the Possession**

*Subject to terms of this clause and subject to the Apartment Allottee having complied with all the terms and conditions of this agreement, and not being in default under any of the provisions of this agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Apartment/Villa/Penthouse by December 2010. The Apartment Allottee agrees and understands that the Company shall be entitled to a grace period of ninety (90)*

days, for applying and obtaining the occupation certificate in respect of the Group Housing Complex.

**(Emphasis supplied)**

25. The Authority has gone through the possession clause of the agreement and observes that the respondent-developer proposes to handover the possession of the allotted unit by December, 2010 with grace period of 3 months.
26. The said grace period is allowed in terms of order dated 08.05.2023 passed by the Hon'ble Appellate Tribunal in **Appeal No. 433 of 2022 tilted as Emaar MGF Land Limited Vs Babia Tiwari and Yogesh Tiwari** wherein it has been held that if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. The relevant portion of the order dated 08.05.2023, is reproduced as under:

*"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."*

27. 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 March, 2011 including grace period of 90 days.

28. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is 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.

29. 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.
30. 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., 06.03.2025 is @ 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
31. The definition of term 'interest' as defined under section 2(z) 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.

32. 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 them in case of delayed possession charges.
33. The respondent in its reply has submitted that an amount of Rs.4,08,301/- and Rs.36,982/- has already been credited on account of Early Payment Rebate as a gesture of goodwill and the same has been accepted by the complainant in full and final satisfaction of his alleged grievances.
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 due date of handing over of possession is March, 2011 but the offer of possession was made on 08.03.2018 and the conveyance deed was executed on 06.09.2018. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the allottees shall be paid, by the promoter, interest for every month of delay from the due date of handing over the possession i.e., March, 2011 till offer of possession (08.03.2018) after obtaining occupation certificate plus two months i.e., 08.05.2018 or actual taking over of possession i.e., 23.06.2018, whichever is earlier at prescribed rate i.e., 11.10 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules. Offer of possession plus two months which comes out to be 08.05.2018 is the earlier date. Thus, the complainant is entitled for delayed possession

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charges from March, 2011 till 08.05.2018. The amount of Rs.4,45,283/- (Rs.4,08,301/- and Rs.36,982/-) already paid on account of Early Payment Rebate shall be adjusted.

**G.III Direct the respondent company to set aside the one-sided indemnity bond get signed by the respondent from the complainants under undue influence.**

35. 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 complainants never gave up their statutory right to seek delayed possession charges as per the provisions of the said Act.
36. Therefore, after execution of the conveyance deed the complainant-allottee cannot seek reliefs other than statutory benefits if any pending. Once the conveyance deed is executed and accounts have been settled, no claim remains. So, no directions in this regard can be effectuated at this stage.

**H.Directions of the authority:**

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

- i. The respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate i.e. 11.10% p.a. for every month of delay from the due date of handing over of possession i.e., March, 2011 till offer of possession (08.03.2018) after obtaining occupation certificate plus two months i.e., 08.05.2018, being earlier,





**HARERA**  
**GURUGRAM**

Complaint No. 6030 of 2022

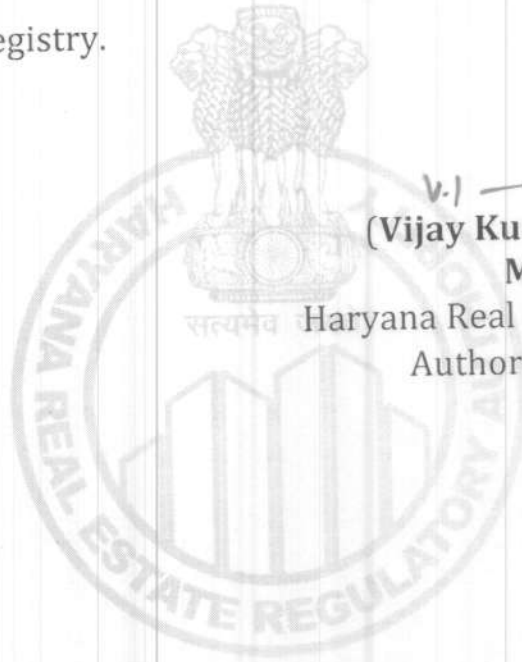
as per section 18(1) of the Act of 2016 read with rule 15 of the rules after adjusting an amount of Rs.4,45,283/- already paid on account of delay compensation/Early Payment Rebate.

- ii. A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.

38. Complaint stands disposed of.

39. File be consigned to registry.

**Dated: 06.03.2025**



**(Vijay Kumar Goyal)**  
**Member**

Haryana Real Estate Regulatory  
Authority, Gurugram

**HARERA**  
**GURUGRAM**