

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

Complaint no.: 7112 of 2022
Date of filing of complaint: 30.11.2022
Date of Order: 03.04.2025

Himanshu Garg
Both R/o: TPD-H-F07-702, Premier Terraces at
Palm Drive, Sector-66, Gurugram-122011

Complainant**Versus**

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

Respondent

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

CORAM:

Shri Vijay Kumar Goyal

Member**APPEARANCE:**

Shri Gaurav Rawat (Advocate)
Shri Dhruv Rohtagi (Advocate)

Complainant
Respondent

ORDER

1. This complaint has been filed by the complainant/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*.

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 the Palm Drive", Sector 66, Gurugram, Haryana
2.	Nature of project	Group housing
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.	RERA registered	24 of 2020 dated 10.09.2020 valid up to 08.08.2021
5.	Unit no.	H- 702, Tower-H, 7 th floor (As per page no. 37 of the complaint)
6.	Unit area	1950 sq. ft. (Super Area) (As per page no. 37 of the complaint)
7.	Revised unit area	1996.17 sq. ft. (Super Area) (As on page no. 79 of the complaint) (Note: Super Area was increased to 1996.17 sq. ft. from 1950 sq. ft.)
8.	Allotment letter	19.05.2008 (As per page no. 32 of the complaint)
9.	Date of execution of buyer's agreement	14.11.2008 (As per page no. 33 of the complaint)
10.	Possession clause	14. POSSESSION (a) Time of handing over the Possession <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</i>

		<p><i>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.</i></p> <p>(Emphasis supplied)</p> <p>(As on page no. 51 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 sale consideration	<p>Rs.1,08,76,890/-</p> <p>(As per schedule of payments on page no. 66 of the complaint)</p>
13.	Amount paid by the complainant	<p>Rs.1,22,79,383/-</p> <p>(As per SOA on page no. 129 of the reply)</p>
14.	Occupation certificate	<p>25.01.2018</p> <p>(As per page no. 134 of the reply)</p>
15.	Offer of possession	<p>08.03.2018</p> <p>(As per page no. 79 of the complaint)</p>
16.	Indemnity cum undertaking	<p>24.07.2018</p> <p>(As per page no. 146 of the reply)</p>
17.	Unit handover letter	<p>14.01.2019</p> <p>(As on page no. 147 of the reply)</p>
18.	Conveyance deed	<p>06.08.2019</p> <p>(As per page no. 90 of the complaint)</p>

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
 - I. That the complainant is a law abiding citizen and residing at R/o TPD-H-F07-702, Premier Terraces at Palm Drive, Sector-66, Gurgaon.
 - 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-F07-702, 7th Floor, Tower 07 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.1,08,76,980/- along with 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 14.11.2008. As per clause 14(a) of the buyer's agreement, the respondent had to deliver the possession of the unit will be delivered on



or before December, 2010. 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 has already paid a total sum of Rs.1,01,37,296/- towards the said unit against total sale consideration of Rs.1,08,76,890/-.
- 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 complainant. 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 he 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 09.07.2015. 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.
- (i) Advance monthly maintenance for 12 months.
 - (ii) Electric meter charges.
 - (iii) Club membership charges.
 - (iv) Gas connection charges.
 - (v) Sewerage connection charges.
 - (vi) Electrification charges.
- 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, 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 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 06.08.2019. While this sale deed acknowledges that the complainant has

paid the total consideration of Rs.1,22,79,383/- 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 14.11.2008. 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 @ 9.80% per annum on the total sum paid by him.
- 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.

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- 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 him but also used his hard-earned money for their enjoyment.
- 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, is constrained to approach this Hon'ble Authority for redressal of his 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 to provide the amenities and golf driving range as per brochure and layout plan provided at the time of booking
 - IV. Direct the respondent company to set aside the one-sided indemnity bond get signed by the respondent from the complainants 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 complainant has got no locus standi or cause of action to file the present complaint after execution of conveyance deed. 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 14.11.2008, as shall be evident from the submissions made in the following paras of the present reply.
 - ii. That the complainant is estopped by his own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. It is submitted that the complainant has already obtained possession of the unit in question vide the letter of offer of possession dated 08.03.2018 and has, further, executed a conveyance deed dated 06.08.2019 regarding the unit in question. The transaction between the complainant and the respondent stands satisfied. The reliefs sought in the present complaint is false and frivolous and the same is barred by estoppel.
 - iii. That the present complaint is not maintainable in law or on facts. The present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint are beyond the purview of this Hon'ble Authority and can only be adjudicated by the Civil Court. The present complaint deserves to be dismissed on this ground alone.



- iv. That the instant complaint is barred by limitation. The complainant has filed the present complaint before the Authority after the execution of the conveyance deed as all the terms and conditions as per the buyer's agreement stands fulfilled in the eyes of law.
- v. That 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 tower in which the apartment in question is located was made on 01.07.2017, i.e., before the Rules, 2017 and the occupation certificate was thereafter issued on 25.01.2018.
- vi. That the complainant has not come before this Hon'ble Authority with clean hands and has suppressed vital and material facts from this Hon'ble Authority. The correct facts are set out in the succeeding paras of the present reply.
- vii. That the complainant is not "allottee" but an investor who has booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale. The apartment in question has been booked by the complainant as a speculative investment and not for the purpose of self-use as his residence. Therefore, no equity lies in favour of the complainant.
- viii. That the complainant had approached the respondent and expressed an interest in booking an apartment in the residential group housing colony developed by the respondent. Prior to approaching the respondent, the complainant had conducted extensive and independent enquiries regarding the project and it was only after the complainant were fully satisfied with regard to all aspects of the project, he took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question.

- ix. That thereafter the complainant and his father Mr. Aditya Kumar Garg, vide an application form dated 21.04.2008 jointly applied to the respondent for provisional allotment of the unit. Pursuant thereto, unit bearing no TPD-H-F07-702 located on the Seventh Floor, Tower-H admeasuring 1950 sq. ft. was allotted vide provisional allotment letter. The complainant consciously and willfully opted for a construction linked payment plan for remittance of sale consideration for the unit in question and further represented to the respondent that they shall remit every installment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainant and proceeded to allot the unit in question jointly in favour of Mr. Aditya Kumar Garg and the complainant. Accordingly, the complainants undertook to be bound by the terms and conditions of the application form/allotment letter.
- x. That the complainant along with his father Mr. Aditya Kumar Garg availed a loan facility from Housing Development Finance Corporation(HDFC). That a tri-partite agreement dated 06.06.2008 was also executed between the complainant, the respondent and HDFC. The complainant has failed to add HDFC as a proper party, without whom, the present proceedings cannot continue.
- xi. That thereafter, a buyer's agreement dated 14.11.2008 was consciously and voluntarily executed between the complainant along with his father Mr. Aditya Kumar Garg and the respondent.
- xii. That the complainant in terms of the indemnities and undertakings executed by them had consciously and voluntarily declared and affirmed that he would be bound by all the terms and conditions of the provisional allotment. The complainant would not be entitled to any interest for any

delay, if any, in delivery of possession of the unit in question or any rebate under a scheme or otherwise or any other discount, by whatever name called, from the respondent.

- xiii. That the complainant had defaulted in timely remittance of the instalments pertaining to the unit in question and therefore, have disintitled themselves for any compensation/interest. The respondent had conveyed to complainant that on account of the defaults, he would not be entitled to any compensation for delay, if any.
- xiv. That since, the complainant was irregular in payment of instalments which is why the respondent was constrained to issue reminders and letters to the complainant requesting him to make payment of demanded amounts. The payments request letter and reminders thereof were sent to the complainant by the respondent clearly mentioning the outstanding amount and the due date for remittance of the respective amounts as per the schedule of payments, requesting him to timely discharge his outstanding financial liability but to no avail. In the meanwhile, Mr. Aditya Kumar Garg expired on 27.11.2017, upon which the complainant and other legal heirs requested the respondent to delete the name of said Mr. Aditya Kumar Garg from its records pertaining to the unit. Based on the records furnished by the complainant and other legal heirs, the respondent accepted the said request and made necessary changes so that the allotment of the unit stood in the name of the complainant.
- xv. That the complainant consciously and maliciously chose to ignore the payment request letters and reminders issued by the respondent and flouted in making timely payments of the instalments which was essential, crucial and an indispensable requirement under the buyer's agreement. Furthermore, when the proposed allottees default in their payments as per

schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially and further causes enormous business losses to the respondent. The complainant chose to ignore all these aspects and wilfully defaulted in making timely payments. That the respondent despite defaults of several allottees earnestly fulfilled its obligations under the buyer's agreement and completed the project as expeditiously as possible in the facts and circumstances of the case. Therefore, there is no equity in favour of the complainant.

- xvi. That the rights and obligations of the complainant as well as the respondent are completely and entirely determined by the covenants incorporated in the buyer's agreement which continues to be binding upon the parties thereto with full force and effect. Clause 14 of the buyer's agreement provides that subject to the allottees having complied with all the terms and conditions of the buyer's agreement, and not being in default of the same, possession of the unit would be handed over by December, 2010 plus grace period of 90 days. Furthermore, it is categorically expressed in clause 14(b)(vi) of the buyer's agreement that in the event of any default or delay in payment of instalments as per the schedule of payments incorporated in the buyer's agreement, the time for delivery of possession shall also stand extended. It is submitted that since the complainant has defaulted in timely remittance of the instalments, and hence, the date of delivery option is not liable to be determined by the complainant. The complainant is conscious and aware of the said buyer's agreement and has filed the present complaint to harass the respondent and compel the respondent to surrender to his illegal demands. It is submitted that the filing of the present complaint is nothing but an abuse of the process of law.

- xvii. 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. 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 ignorance of the provisions of the buyer's agreement. The interest is compensatory in nature and cannot be granted in derogation and ignorance of the provisions of the buyer's agreement. It is submitted that the interest for the alleged delay or compensation demanded by the complainant is beyond the scope of the buyer's agreement and the same cannot be demanded by the complainant being beyond the terms and conditions incorporated in the buyer's agreement.
- xviii. That without admitting or acknowledging in any manner the truth or correctness of the frivolous allegations levelled by the complainant and without prejudice to the contentions of the respondent, it is submitted that the alleged interest frivolously and falsely sought by the complainant was to be construed for the alleged delay in delivery of possession. It is pertinent to note that an offer for possession marks termination of the period of delay, if any. The complainant is not entitled to contend that the alleged period of delay continued even after receipt of offer for possession. The complainant has consciously and maliciously refrained from obtaining possession of the unit in question. Consequently, the complainant is liable



for the consequences including holding charges, as enumerated in the buyer's agreement, for not obtaining possession.

- xix. That subsequently, the complainant approached the respondent requesting it to deliver the possession of the unit in question. A unit handover letter dated 14.01.2019 was executed by the complainant, specifically and expressly agreeing that the liabilities and obligations of the respondent as enumerated in the allotment letter or the buyer's agreement stand satisfied. The complainant has intentionally distorted the real and true facts in order to generate an impression that the respondent has reneged from his commitments. No cause of action has arisen or subsists in favour of the complainant to institute or prosecute the instant complaint. The complainant has preferred the instant complaint on absolutely false and extraneous grounds in order to needlessly victimise and harass the respondent.
- xx. That after execution of the unit handover letter dated 14.01.2019 and obtaining of possession of the unit in question, the complainant is left with no right, entitlement or claim against the respondent. The complainant has further executed a conveyance deed dated 06.08.2019 in respect of the unit in question. The transaction between the complainant and the respondent stands concluded and no right or liability can be asserted by the respondent or the complainant against the other. The complainant has obtained possession of the unit in question and the complaint is a gross misuse of process of law. The contentions advanced by the complainant in the false and frivolous complaint is barred by estoppel.
- xxi. That it was the complainant who was not forthcoming with the outstanding amounts as per the schedule of payments, therefore, are disentitled for any

compensation/interest. The present complaint is nothing but an abuse of the process of law.

- xxii. That the complainant has consciously defaulted in performing his part of obligations as enumerated in the buyer's agreement as well as under the Act and it is ~~tride~~ that the complainant cannot be permitted to take advantage of his own wrongs. The instant complaint constitutes a gross misuse of process of law, without admitting or acknowledging in any manner the truth or correctness of the frivolous allegations made by the complainant and without prejudice to the contentions of the respondent.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

8. The 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.1 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.

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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) 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 complainant at a later stage.

F. Finding on objections raised by the respondent:

F.I Objection regarding the complaint being barred by estoppel.

12. The respondent has raised an objection that the instant complaint is barred by estoppel as upon execution of conveyance deed dated 06.08.2019, the complainant is now estopped from raising these belated claims/demands as he himself had acknowledged and accepted that *"that the vendee is fully satisfied in this regard and has no complaint or claim in respect of the area of the said apartment, any item of work, material, quality of work, installation, etc., therein."*

13. The Authority observed that though the conveyance deed has been executed on 06.08.2019 but as per proviso to section 18 of the Act of 2016, if the allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed. In the present complaint, as per the possession clause of the buyer's agreement, the due date of possession of the unit was March, 2011 but the same was offered on 08.03.2018 after a delay of more almost 7 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.II Objection regarding the complainant being investor.

14. The respondent took a stand that the complainant is investor and not consumer and therefore, he is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement, it is revealed that the complainant is buyer and he has paid a total price of Rs.1,22,79,383/- to the promoter towards purchase of a unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) 'allottee' in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or

otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

15. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant is allottee as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred to in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of the promoter that the allottee being investor is not entitled to protection of this Act also stands rejected.

F.III Objection w.r.t. application of occupation certificate of the project was made prior to notification of the Rules.

16. The respondent-promoter has raised the contention that the said project of the respondent is a pre-RERA project as the respondent has already made an application for occupation certificate to the competent authority on 01.07.2017 i.e., before the coming into force of the Act and the rules made thereunder.
17. 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 ongoing 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.

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

19. 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."

20. 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."

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

F.V Objection regarding the complaint barred by Limitation Act, 1963

22. Another contention of the respondent is that the complaint is barred by limitation as the due date of possession as per the agreement was March, 2011 and the complainant has failed to exercise his rights within the prescribed timeframe. The Authority observes that although the cause of action to file the present complaint accrues in March, 2011 i.e. the date of handing over of possession as stipulated under the terms and conditions of the agreement but it is a settled situation now that after due date of possession of the unit, the cause of action is continuing till such obligation of offering the possession of the unit is fulfilled by the promoter-builder. In the present case, the subject unit was offered to the complainant on 08.03.2018. Thus, it was after date of such offer of possession when time for limitation starts tickling. Further, in view of Covid-19, Hon'ble Apex Court vide order dated 10.01.2022 in suo-moto W.P. (C) No. 3 of 2020 has declared period from 15.03.2020 to 28.02.2022 as zero period. Further, as per the scheme of calculating the remaining limitation as provided in the

order of Hon'ble Supreme Court, the present complaint which was filed on 30.11.2022 is well within the limitation. Thus, the contention of promoter that the complaint is time barred by proviso of Limitation Act stands rejected.

F.VI Objection regarding non-joinder of HDFC Bank as necessary party.

23. 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 along with the respondent and the HDFC bank had executed a tri-partite agreement. But there is no document on record evidencing the same fact. There is a letter dated 21.06.2008 stating that a housing loan has been advanced by the HDFC bank in favour of the complainant but no loan amount is mentioned in the aid letter. Further 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 HDFC 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 complainant 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 complainant from the respondent on account of the interest, as per the guidelines laid in the Act of 2016.
24. The above-mentioned reliefs sought by the complainant are taken together being inter-connected.
25. 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."

26. Clause 14(a) of buyer's agreement dated 14.11.2008 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)

27. 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.
28. 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."

29. 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.
30. **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.

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., 03.04.2025 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.
34. 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.
35. 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 06.08.2019. 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., 14.01.2019, 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 charges from March, 2011 till 08.05.2018. The respondent may adjust the amount paid towards the delay compensation, if any.

G.III Direct the respondent to provide the amenities and golf driving range as per brochure and layout plan provided at the time of booking

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

36. In the present case, the conveyance deed was executed on 06.08.2019 vide which the complainant has relinquished his rights on its execution. The relevant clause is reproduced below for reference:

"That the actual, physical, vacant possession of the said apartment has been handed over to the vendee and the vendee hereby confirms taking over possession of the said apartment/ parking space(s) from the vendors after satisfying himself/herself that the construction as also the various installations like electrification work, sanitary fittings, water and sewerage connection etc. have been made and provided in accordance with the drawings, designs and specifications as agreed and are in good order and condition and that te vendee is fully satisfied in this regard and has no complaint or claim in respect of the area of this regard and has no complaint or claim in respect of the area of the said apartment, any item of work, amterial, quality of work, installation etc., therein."

37. 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:

38. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations

A

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, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
 - 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.
39. Complaint stands disposed of.
40. File be consigned to registry.

Dated: 03.04.2025


(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory
Authority, Gurugram