

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

**Complaint no.:** 4960 of 2023  
**Date of filing of complaint:** 26.10.2023  
**Date of Order:** 24.04.2025

1. Mohan K Hathiramani  
2. Babita Hathiramani  
**Both R/o:** B-21, Mayfair Gardens, Hauz Khaz,  
New Delhi-110017

**Complainants**

**Versus**

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

**Respondent**

**Regd. office at:** 306-308, Square One, C-2,  
District Centre, Saket, New Delhi-110017

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

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Shri Harsh Jain (Advocate)  
Shri Harshit Batra (Advocate)

Complainants  
Respondent

**ORDER**

1. This complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act

or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.

#### A. 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	Palm Premier at Palm Hills, Sector 77, Gurugram, Haryana
2.	Area of the project	24.477 acres
3.	DTCP license no.	56 of 2009 dated 31.08.2009 valid up to 30.08.2024
4.	Name of licensee	Robin Software Pvt. Ltd. and another
5.	Unit no.	PH4-76-0701, 7 <sup>th</sup> floor and Block-76 (As per page no. 39 of the complaint)
6.	Unit area	1950 sq. ft. (Super Area) (As per page no. 39 of the complaint)
7.	Provisional allotment letter dated	10.01.2011 (As per page no. 33 of the reply)
8.	Date of execution of buyer's agreement with original allottee i.e., Tanuj Patro	22.06.2011 (As per page no. 37 of the complaint)
9.	Nomination letter	13.06.2012 (As per page no. 101 of the reply)
10.	Possession clause	<b>11. POSSESSION</b> <b>(a) Time of handing over the Possession</b> <i>Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the</i>



		<p><i>possession of the Unit within 33 months from the date of start of construction, subject to timely compliance of the provision of the buyers agreement by the allottee. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of three months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project.</i></p> <p><i>(Emphasis supplied)</i>  (As per page no. 50 of the complaint)</p>
11.	Date of start of construction	28.04.2011 (As per statement of account on page no. 128 of the reply)
12.	Due date of possession	<b>28.04.2014</b> [Note: Due date to be calculated 33 months from the date of start of construction i.e., 28.04.2011 plus 3 months grace period]
13.	Total consideration	Rs.95,44,788/- (As per statement of account on page no. 128 of the reply)
14.	Total amount paid by the complainant	Rs.99,94,945/- (As per statement of account on page no. 128 of the reply)
15.	Occupation certificate	24.12.2019 (As per page no. 118 of the reply)
16.	Offer of possession	02.01.2020 (As per page no. 121 of the reply)
17.	Reminder letters for taking Possession	11.06.2020, 19.08.2020 (As per page no. 126 & 127 of the reply)

## B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
- I. That the complainants being the second/subsequent buyer fall within the definition of "allottee" as per Act of 2016. The complainants paid an amount of Rs.1,00,01,239/- till now to the respondent against the residential apartment bearing no. PH4-76-0701, 7<sup>th</sup> floor, Block-76 admeasuring 1950 sq. ft. booked in respondent's project "Palm Hills" situated at Sector-77, Village Shikopur, Gurgaon which is more than 100% of the total amount of the above said project.
  - II. That the respondent provided false and incorrect statements in respect of said unit/residential apartment and the complainants have thereby lost their hard earned money facing humiliation and harassment, physical as well as mental in the hands of respondent(s) and therefore the respondent are liable to compensate the losses caused to the complainants due to the fraudulent and unfair trade practice on the part of respondent as per Section 12 of the RERA, 2016 and rules thereunder.
  - III. That the respondent acted in a very deficient, unfair, wrongful, fraudulent manner by not allotting the said unit/ residential apartment to the complainant. Therefore the respondent is liable to pay the damages and compensation for the monetary loss and harassment suffered by the complainants due to the aforesaid illegal and wrongful acts of the respondent.
  - IV. That the respondent is well aware that the project is over delayed and hence is liable to pay interest as per the provisions of the Act of 2016 and Rules, 2017. The respondent did not care to keep the complainants informed about the delay in possession despite multiple attempts made by the complainants to obtain such information and hence, the principle of equity does not favour the respondent. The respondent is required to offer



the possession as required under law as the complainants have waited for a long period of 9 years since the booking of the said apartment.

- V. That the agreement is unfair and one-sided and loaded with terms such as clauses 3(c)(vii), (viii), 7(2)(a) etc. which entitles the respondent to gain undue advantage over the complainant and indirectly penalising the consumers. There is no parity in the remedies available to the complainants and the respondent showing biased and unfair trade practices of the respondent.
- VI. That the complainants had no option but to accept the terms of the residential apartment buyer's agreement dated 22.06.2011 without any negotiation because of the assurance given by the respondent that they will stick to their assurances and promises. However, evidently, the respondent has miserably failed in keeping his promises and assurances causing irreparable losses and injury to the complainants.
- VII. That the inordinate delay on part of the respondent in delivering the possession in violation of the terms of the residential apartment buyer's agreement amounts to deficiency in the services offered by the respondent. The complainants are therefore entitled for interest for the delayed period till the actual proper handover of the unit.
- VIII. That the cause of action accrued in favour of the complainants and against the respondent on the date when the respondent advertised the said project, it again arose on diverse dates when the apartment owners entered into the buyer's agreement, it also arose when the respondent inordinately and unjustifiably and with no proper and reasonable legal explanation or recourse delayed the project beyond any reasonable measure continuing to this day, it continues to arise as the complainants have not been given possession of their apartment and have not been paid the amount of

interest for delayed possession of the unit in the project till date and the cause of action is still continuing and subsisting on day to day basis.

- IX. That the present complaint is within the prescribed period of limitation. The complainants have not filed any other complaint before any other forum against the erring respondents 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):
- Direct the respondent to hand over the possession of the said unit/residential apartment with the amenities and specifications as promised in all completeness.
  - Direct the respondent to pay the interest on the total amount paid by the complainants at the prescribed rate of interest as per Act of 2016 from due date of possession till date of actual physical possession.
  - Direct the respondent not to force the complainants to sign an indemnity cum undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.
  - Direct the respondent not to charge anything which is not a part of the payment plan as agreed upon.
  - Direct the respondent to provide the exact lay out plan of the said unit.
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 at the very outset, it is submitted that the instant complaint is untenable both in facts and in law and is liable to be rejected on this ground alone.
- II. That the complainants are estopped by their acts, conduct, acquiescence, laches, omissions, etc. from filing the present complaint.
- III. That the complainants have not come before the Hon'ble Authority with clean hands and have suppressed vital and material facts from the Hon'ble Authority.
- IV. That the original allottees (Mr. Tanuj Patro, and Mrs. Woodi Jaya Surya Lakshmi) approached the respondent and expressed interest in booking of an apartment in the residential group housing colony developed by respondent known as "Palm Hills" situated at Sector-77, Village-Shikopur, Gurgaon. Prior to the booking, the original allottees conducted extensive and independent enquiries with regard to the project, only after being fully satisfied on all aspects, that they took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question.
- V. That thereafter the original allottees, vide an application form applied to the respondent for provisional allotment of the unit. Pursuant thereto, a unit bearing no. PH4-76-0701 on 7<sup>th</sup> Floor in Block-76 admeasuring 1950 sq. ft. was allotted vide provisional allotment letter dated 10.01.2011. The original allottees 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 original allottees and proceeded to allot the unit in question in their favor.

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- VI. That thereafter, a buyer's agreement dated 22.06.2011 was executed between the original allottees and the respondent. The buyer's agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on the parties.
- VII. That the complainants bought the unit and executed an agreement to sell dated 07.06.2012 with the original allottees and requested the respondent to nominate the complainants. The, original allottees and the complainants also executed affidavit and Indemnity cum Undertaking on 07.06.2012 in this regard. The transfer was thereafter accepted by the respondent vide nomination letter dated 13.06.2012.
- VIII. That without prejudice to the rights and submissions of the respondent, it is submitted that the complainants bought the unit with full knowledge about the status of construction of the project and after fully knowing the fact that there are certain considerable and legitimate delays in the same on account of the reasons beyond the control of the respondent and it was with such knowledge that the unit was purchased by the complainants without any delay or demur. That the complainants bought the unit with open eyes after having inspected the unit.
- IX. That the complainants being subsequent buyer, has no right to seek delay possession charges or any other relief. That having knowledge of the such delay, due to circumstances beyond the control of the respondent, the complainants willingly and voluntarily entered into the agreement for sell and the transfer documents thereof leading to their nomination. That such prior knowledge, willing and self-initiated endorsement of the complainants, without any protest, amounts to acceptance of the existing circumstances and the complainants cannot



be allowed to reap benefits by extracting monies from the respondent and forgoing their complete satisfaction against the unit. Hence, the complaint is liable to be dismissed with costs against the complainants.

- X. That without prejudice to the rights and submissions of the respondent, as per clause 11(a) of the buyer's agreement dated 22.06.2011, the due date of possession was subject to the allottees having complied with all the terms and conditions of the buyer's agreement. Being a contractual relationship, reciprocal promises are bound to be maintained. The rights and obligations of allottee as well as the builder are completely and entirely determined by the covenants incorporated in the buyer's agreement which continue to be binding upon the parties thereto with full force and effect.
- XI. That the remittance of all amounts due and payable by the complainants under the buyer's agreement as per the schedule of payment incorporated in the said buyer's agreement was of the essence of the said 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 the occurrence of the facts/reasons beyond the power and control of the respondent. It was categorically provided in clause 11(b)(iv) that in case of any default/delay by the allottees in payment as per the schedule of payment incorporated in the buyer's agreement, the date of handing over of possession shall be extended accordingly. However, it shall solely be on the respondent's discretion whether to extend the said date of handing over of possession of the unit till the payment of all outstanding amounts by the complainants to the satisfaction of the respondent.

- XII. That it is submitted that the complainants had defaulted/delayed in making the due payments, upon which, reminders were also served to the complainants, and had paid delayed payment interest at multiple occasions. On 09.07.2014, a cheque bearing no. 573620 of the complainants was also bounced. The *bonafide* of the respondent is also essential to be highlighted at this instance, who had served a number of request letters and demand notes to the complainants to ensure that the payments are made in a timely fashion. Upon the defaults caused in making timely payments after payment request letter dated 14.03.2011, 24.03.2011, 12.12.2011, 22.02.2012 and 18.07.2012 and several reminders were served dated 13.08.2012, 28.08.2012, 07.02.2013, 19.07.2013, 03.04.2014, 07.07.2014, 01.05.2017 and 18.06.2018.
- XIII. That in the year 2012, on the directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) was regulated. The Hon'ble Supreme Court directed framing of modern mineral concession rules. The respondent was faced with certain other force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. It is pertinent to state that the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide order dated 02.11.2015, mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna River bed. These orders in fact *inter-alia* continued till the year

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2018. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was almost for 2 (two) years that the scarcity as detailed aforesaid continued, despite which, all efforts were made and materials were procured at 3-4 times the rate and the construction of the project continued without shifting any extra burden to the customer. The time taken by the respondent to develop the project is the usual time taken to develop a project of such a large scale and despite all the *force majeure* circumstances, the respondent completed the construction of the project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the complainants and demanding the prices only as and when the construction was being done.

- XIV. That all the circumstances stated hereinabove come within the meaning of *force majeure*, as stated above. Thus, the respondent has been prevented by circumstances beyond its power and control from undertaking the implementation of the project during the time period indicated above and therefore the same is not to be taken into reckoning while computing the period of computation of due date of possession, as has been provided in the buyer's agreement.
- XV. That despite there being a number of defaulters in the project, the respondent had to infuse funds into the project and have diligently developed the project in question. It must be noted by the Hon'ble Authority that despite the default caused, the respondent applied for occupation certificate in respect of the said unit on 21.02.2019 and the same was thereafter issued on 24.12.2019. Thereafter, the complainants were offered possession of the unit in question through letter of offer of possession letter dated 02.01.2020. The complainants

were called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit in question to the complainants. At this stage, it is of extreme relevance to note that a sum of Rs.9,71,741/- was credited to the complainants as delayed possession charges.

- XVI. That after the offer of possession was made, the respondent has been continuously requesting, the complainants to fulfil the necessary formalities and take the possession of the unit as also evident from the mails sent by the respondent on 06.01.2020 and 11.02.2020. However, despite multiple requests and reminders by the respondent, the complainants have failed to fulfil their obligation as per buyer's agreement as well as their statutory obligation. It is submitted that due to the lackadaisical approach of the complainants, the respondent was constrained to issue possession reminders dated 11.06.2020, and 19.08.2020, despite of which, the complainants failed to oblige their obligations and failed to take the possession of the said unit.
- XVII. That the respondent earnestly requested the complainants to obtain possession of the unit in question and further requested the Complainants to execute a conveyance deed after completing all the formalities regarding delivery of possession. However, the complainants did not pay any heed to the legitimate, just and fair requests of the respondent and threatened the respondent with institution of unwarranted litigation. All requests of the respondent to take the possession of the unit fell on deaf ears of the complainants. The instant complaint is preferred in complete contravention of complainants earlier representations and documents executed in this regard. The present frivolous complaint has been filed with the *mala fide* intention



to mount undue pressure upon respondent thereby compelling it to succumb to their unjust and illegitimate demands.

- XVIII. That due to not taking the timely possession of the unit, the respondent has been maintaining the unit and since the project has been handed over to the RWA, CAM charges are also pending to be paid by the complainants. Additionally, a sum of Rs.4,20,610/- as of the date of SOA is outstanding as holding charges along with the other pending amounts.
- XIX. That the complainants have intentionally distorted the real and true facts in order to generate an impression that the respondent has reneged from its commitments. No cause of action has arisen or subsists in favor of the complainants to institute or prosecute the instant complaint. The complainants have preferred the instant complaint on absolutely false and extraneous grounds in order to needlessly victimize and harass the respondent.
- XX. That in light of the *bona fide* conduct of the respondent, the fact that no delay has been caused to the complainants, the peaceful possession of the unit having been offered to the complainants, non-existence of cause of action, claim being barred by limitation and the frivolous complaint filed by the complainants, this complaint is bound to be dismissed with heavy costs in favour 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.I Territorial jurisdiction**

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**

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.*

9. 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.1 Objection regarding the force majeure conditions:**

10. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various construction bans, issue of second staircase, default of contractors, lack of availability of building material, regulation of the construction and development activities by the judicial authorities including NGT in NCR on account of the environmental conditions, restrictions on usage of ground water by the High Court of Punjab & Haryana, demonetization of currency and non-payment of instalments by different allottees of the project, etc. But all the pleas advanced in this regard are devoid of merit. Therefore, it is nothing but obvious that the project of the respondent was already delayed, and no extension can be given to the respondent in this regard. The events taking place such as restriction on construction due to weather conditions were for a shorter period of time and are yearly one and the promoter is required to take the same into consideration while launching the project. Though some allottees may not be regular in paying the amount due but the interest of all the stakeholders concerned with the said project cannot be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

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

- G.1 Direct the respondent to pay the interest on the total amount paid by the complainants at the prescribed rate of interest as per Act of 2016 from due date of possession till date of actual physical possession.

11. In the present complaint, the complainants intend to continue with the project and are 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."

12. Clause 11(a) of buyer's agreement dated 22.06.2011 provides for handing over of possession and is reproduced below:

**11. POSSESSION**

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

Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the Unit within **33 months from the date of start of construction, subject to timely compliance of the provision of the buyers agreement by the allottee.** The Allottee(s) agrees and understands that the Company shall be entitled to a **grace period of three months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project.**

*(Emphasis supplied)*

13. 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 within 33 months from the date of start of construction i.e., 28.04.2011 with grace period of 3 months.
14. 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."

15. 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 28.04.2014 including grace period of 3 months.
16. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges however, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

**Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]**

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

17. 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.
18. 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., 24.04.2025 is @ 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
19. 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.
20. Therefore, interest on the delay payments from the complainants 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.
21. The complainants in the present complaint are subsequent allottees and had purchased the apartment in question from the original allottees and thereafter, the respondent had acknowledged the same vide nomination letter dated 13.06.2012, i.e. before due date of handing over of possession which is 28.04.2014. Thus, the complainants stepped into the shoes of the original allottees before due date of possession. In terms of the order passed by the authority in complaint titled as **Varun Gupta Versus Emaar MGF Land Ltd. (CR/4031/2019)**, the complainants are entitled to delayed



possession charges w.e.f. the due date of possession i.e., 28.04.2014 as the complainants stepped into the shoes of the original allottees before the due date of possession.

22. 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 possession is 28.04.2014 but the offer of possession was made on 02.01.2020 after obtaining occupation certificate on 24.12.2019. 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 possession i.e., 28.04.2014 till offer of possession [which is 02.01.2020] after obtaining occupation certificate plus two months i.e., 02.03.2020 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. The amount of Rs.9,71,741/- already paid on account of delay compensation shall be adjusted.

**G.II Direct the respondent to hand over the possession of the said unit/residential apartment with the amenities and specifications as promised in all completeness.**

23. The complainants are seeking handover of peaceful possession of the unit in terms of the apartment buyer's agreement dated 22.06.2011. As per clause 11(a), the respondent has to deliver the possession of the unit with 33 months from the date of this agreement with further extension of 3 months to the complainants as detailed out in para 14 & 15. In the present complaint, the respondent has obtained the occupation certificate on

24.12.2019 and thereafter on 02.01.2020 an offer of possession has been made to the complainants. Thus, it can be said that a valid offer of possession has been made by the respondent on 02.01.2020, and under section 19(10) of the Act of 2016, the allottee is under an obligation to take the possession of the unit within a period of two months after receipt of the occupancy certificate issued for the said unit. Thus, the complainants are directed to take the possession of the subject within 30 days from this order on payment of outstanding dues, if any remains after adjustment of delayed possession charges by the respondent.

**G.III Direct the respondent not to force the complainants to sign an indemnity cum undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.**

24. The respondent is directed not to place any condition or ask the complainants to sign an indemnity of any nature whatsoever, which is prejudicial to their rights as has been decided by the authority in complaint bearing no. **4031 of 2019 titled as Varun Gupta V. Emaar MGF Land Ltd.**
25. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainants. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.
26. As the respondent has already made an offer of possession on 02.01.2020, thus the respondent is directed to get the conveyance deed executed within 90 days from handing over of possession.

**G.IV Direct the respondent to provide the exact lay out plan of the said unit.**

27. Section 19(1) entitles the allottee to obtain the information relating to sanctioned plans and layout plans. The relevant clause is reproduced below for ready reference:



"19(1)

*The allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications, approved by the competent authority and such other information as provided in this Act or the rules and regulations made thereunder or the agreement for sale signed with the promoter."*

28. Thus, the respondent is directed to provide a copy to the complainants of exact out plan of the unit of the complainants within a period of 30 days from this order.

**H. Directions of the authority:**

29. 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):
- 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., 28.04.2014 till offer of possession (02.01.2020) after obtaining occupation certificate plus two months i.e., 02.03.2020, being earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules after adjusting an amount of Rs.9,71,741/- already paid on account of delay compensation..
  - The complainants are directed to take the possession of the unit within 30 days from this order on payment of outstanding dues, if any remains after adjustment of interest for the delayed period and the respondent shall get the conveyance deed executed in terms of Section 17 of the Act of 2016.
  - The respondent is directed to provide a copy of exact lay out plan of the unit to the complainant/allottees within a period of 30 days from this order.
  - The respondent shall not charge anything from the complainants which is not a part of the payment plan as agreed upon between the parties.

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v. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

30. Complaint stands disposed of.

31. File be consigned to registry.

**Dated: 24.04.2025**

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

**Haryana Real Estate Regulatory  
Authority, Gurugram**

**HARERA**  
**GURUGRAM**