

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

Date of Order : 08.05.2025

NAME OF THE BUILDER		M/S EMAAR MGF LAND LIMITED	
PROJECT NAME		" EMAAR GURGAON GREENS"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/1944/2022	Amoran Narang & Ankur Narang V/S M/s Emaar MGF Land Limited	Shri Dharmender Sehrawat Advocate and Shri Dhruv Rohatgi Advocate
2.	CR/377/2022	M/s Emaar MGF Land Limited V/S Amoran Narang & Ankur Narang	Shri Dhruv Rohatgi Advocate and Shri Dharmender Sehrawat Advocate

CORAM:

Shri Vijay Kumar Goyal

Member

ORDER

1. This order shall dispose of both the complaints titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

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2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, **"Emaar Gurgaon Greens"** being developed by the same respondent/promoter i.e., **M/s Emaar MGF Land Ltd.**
3. The aforesaid complaints were counter filed by the parties against each other on account of violation of the buyer's agreement executed between the parties in respect of said unit.
4. The facts of both the complaints filed by the complainants are similar. Out of the above-mentioned case, the particulars of lead case **CR/1944/2022 Amoran Narang and Ankur Narang V/S Emaar MGF Land Limited** are being taken into consideration for determining the rights of the parties.

A. Project and unit related details

5. Both the cases relate to one allotted unit. One among these is filed by the allottee and the other one is filed by the builder, so far deciding both the cases, the facts of first case are being taken. But before that the particulars of unit details, sale consideration, the amount paid by the complainants, 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	"Emaar Gurgaon Greens", Sector 102, Gurugram, Haryana
2.	Total area of the project	13.53 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	75 of 2012 dated 31.07.2012 valid up to 30.07.2020.
5.	Unit no.	GGN-22-1101, 11 th floor, Building no. 22 (As per page no. 18 of the complaint)
6.	Area admeasuring	1650sq. ft. (Super area) (As per page no. 18 of the complaint)



7.	Date of execution of buyer's agreement	02.05.2013 (As per page no. 15 of the complaint)
8.	Possession clause	Clause 14. POSSESSION (a) Time of handing over the Possession <i>Subject to terms of this clause and barring force majeure conditions, and subject to the Allottee having complied with all the terms and conditions of this 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 unit within 36 (Thirty Six) months from the date of start of construction, subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the Company shall be entitled to a grace period of 5 (five) months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project"</i> (Emphasis supplied) (As per page no. 31 of the complaint)
9.	Date of commencement of construction	19.06.2013 (As per schedule of payment dated 01.02.2013 on page no. 105 of the reply)
10.	Due date of possession	19.11.2016 [Note: Due date to be calculated 36 months from the date of start of construction i.e., 19.06.2013 plus 5 months grace period]
11.	Total sale consideration	Rs.1,28,27,047/-

		(As per schedule of payment on page no. 46 of the complaint)
12.	Total amount paid by the complainants	Rs.1,24,70,407 /- (As per statement of account on page no. 115 of the reply and confirmed by the counsels for both parties during proceedings of the day dated 08.05.2025)
13.	Occupation certificate	30.05.2019 (As per page no. 93 of the complaint)
14.	Offer of possession	31.05.2019 (As per page no. 95(A) of the complaint)

B. Facts of the complaint

6. The complainants/allottees have made the following submissions in the complaint:
 - i. That the respondent is a real-estate developer company, which has developed various commercial and residential projects in Gurgaon. The representatives of the respondent approached the complainants to invest in its residential project "Gurgaon Greens" situated in Sector 102, Gurgaon, Haryana and painted a fancy picture of the project and also boasted about the great reputation of the respondent in the industry. Based on the false representations and inducements of the representatives, the complainants agreed to invest in the said project.
 - ii. That thereafter, the complainants filled out the allotment form and the unit no. GGN-22-1101 was allotted to the complainants. Consequently the builder buyer's agreement dated 02.05.2013 was executed between the respondent and the complainants.

- iii. That as per clause 14(a) of the agreement, the respondent was under an obligation to hand over the possession of the flat within 36 months from the date of start of construction. That since the construction of the project was started in May 2013, thus, the respondent was under an obligation to hand over the project by September 2016 including the grace period.
- iv. That the BBA executed between the complainants and the respondent contain highly unfair terms and conditions, to which, the complainants had no choice but to agree as the payment made in advance would have been otherwise forfeited by the respondent. It is stated that as per clause 13 of the BBA, an interest of 24% p.a. is chargeable by the respondent for the delay caused by the complainants whereas when the delay is caused by the respondent, the respondent is only liable to pay an amount of Rs.7.50/- per sq. ft. per month for the super area of the unit for the period of delay. It is pertinent to note that the compensation offered by the respondent is unjust, unfair and also against the provision of the Act of 2016.
- v. That as per the payment schedule, payment towards the sale consideration amount had to be done in thirteen instalments. The total sale consideration amount of the unit comes to a total of Rs.1,29,90,915/- as per the payment schedule attached with the BBA, out of which the complainants have already made the payment of Rs.1,24,48,540/-. It is pertinent to note that the complainants have paid 12 instalments and only one instalment is left, which is to be paid at the time of intimation of possession.
- vi. That the complainants kept waiting for the delivery of possession, but the respondent kept on delaying the construction of the project.



There was a delay in the construction and the respondent had failed at fulfilling its obligation, the complainants never stopped making the payments of the instalments in the hope that the delay would not be for a long time. It is pertinent to note that the occupation certificate for the unit was only issued on 30.05.2019, thus marking the delay in handing over the possession by almost 3 years.

- vii. That subsequently, after receiving the occupation certificate, the respondent intimated the complainants to take over the possession of the unit. However, when the complainants asked the officials of the respondent about the interest for delay in handing over of the possession, the officials of the respondent informed that a compensation of Rs.3,75,929/- would only be offered. A sum of Rs.1,24,48,540/- which is the hard earned money of the complainants, was stuck with the respondent. The complainants requested the respondent to offer a fair and justified compensation, however, the respondent did pay any heed to the requests of the complainants. The complainants even sent multiple emails to the respondent to which the officials of the respondent finally replied via email dated 10.02.2022 and agreed to conduct a meeting, however, when the complainants gave the time for the meeting via its email dated 15.02.2022, the officials of the respondent ignored the same and no meeting was held.
- viii. That the respondent not only delayed the possession of the unit, but also refused to pay interest for the delay as enumerated under Section 18(1) of the Act. The respondent is also coercing the complainants to make residue payment of the unit and get the sale deed for the same registered, without paying the interest for the

delay caused which is unlawful and unjustified and the same shall not be allowed. The acts of the respondent have caused grave losses and agony to the complainants and the respondent shall be held liable for the same.

- ix. That further, to avoid the payment of the interest for delay, the respondent cleverly filed a complaint bearing no. RERA-GRG-377-2022 before the Authority with mala fide intentions. The same is nothing but a pressure tactic used by the respondent to pressurize the complainants into making the payment of the last instalment, without having to pay the interest for delay. The complainants are willing to take the possession of the unit subject to payment of interest for delay in handing over of the possession.
- x. That the complainants aver that in view of the principle of the parity the respondent is liable to pay interest as per RERA Act in case of any default on its part. The respondent has not only violated the terms and conditions of the agreement but has also infringed the laws. Thus, the complainants have approached the Hon'ble Adjudication Officer to seek protection and compensation for the unfair and unlawful practices of the respondent.

C. Relief sought by the complainant:

- 7. The complainants in complaint no. 1944/2022 has sought following reliefs:
 - i. Direct the respondent to pay delayed possession charges for delay in possession of the allotted unit as the respondent/builder was supposed to deliver the allotted unit by October 2015 and there is almost delay of 43 months in handing over the possession of the unit along with the interest for the delayed period.

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8. The complainant in compliant no. 377/2022 has sought following reliefs:
- Direct the respondent-allottee to pay outstanding dues of Rs.3,94,445/- along with interest at the prescribed rate as per the rules and to take possession of the subject unit & execute the conveyance deed.
 - Direct the respondent to pay litigation costs of Rs.50,000/-.
9. On the date of hearing, the authority explained to the respondents/promoter about the contravention 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:

10. The respondent has contested the complaint on the following grounds:
- 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.
 - That the complainants have 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 02.05.2013, as shall be evident from

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the submissions made in the following paras of the present reply.

- iii. That, without admitting or acknowledging the truth or legality of the allegations advanced by the complainants 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. The provisions of the Act relied upon by the complainants for seeking interest or compensation cannot be called in to aid in derogation and in negation of the provisions of the buyer's agreement. The complainants cannot claim any relief which is not contemplated under the provisions of the buyer's agreement. The complainants cannot demand any interest or compensation beyond or contrary to the agreed terms and conditions between the parties.
- iv. That the present complaint has been filed as an afterthought and as a counterblast to complaint bearing no RERA-GRG-377-2022 filed by the respondent upon the willful and malafide refusal of the complainants to make payment of balance amounts payable under the buyer's agreement dated 02.05.2013 and to take possession of the unit allotted to them. The complainants are in default of the buyer's agreement as well as Section 19(10) of Act of 2016. The present complaint is liable to be dismissed on this ground as well.



- v. That the complainants is estopped by his own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint.
- vi. That as per the averments in the complaint, the due date for offer of possession was September 2016. Therefore, without prejudice to the contentions of the respondent that there has been no delay or default on the part of the respondent and without admitting in any manner any truth in the allegations made by the complainants, it is submitted that the cause of action, if any, for filing of the present complaint arose prior to the date of coming into force of the present Act. Hence, the complaint is barred by limitation and liable to be dismissed on this ground also.
- vii. That the complainants are not "Allottees" but investors who have purchased the unit in question as a speculative investment. The complainants admittedly do not even reside in India.
- viii. That the complainants, through their property dealer, had approached the respondent and expressed his interest in booking a unit in the residential group housing project being developed by the respondent known as "Gurgaon Greens" situated in Sector 102, Village Dhankot, Tehsil & District Gurgaon. Prior to making the booking, the complainants conducted extensive and independent enquiries with regard to the project and it was only after the complainants was fully satisfied about all aspects of the project, the complainants took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question.

- ix. That the complainants were provisionally allotted unit no GGN-22-1101, admeasuring 1650 sq. ft. saleable area. The buyer's agreement was executed between the complainants and the respondent, willingly and consciously after duly understanding and accepting the terms and conditions thereon.
- x. That the complainants had opted for a construction linked payment plan in which the first three instalments were time bound and the remaining instalments were payable upon achievement of the construction milestone indicated in the payment plan. Although the complainants had agreed and undertaken to make timely payments in accordance with the payment schedule, but the complainants defaulted in payment of instalments.
- xi. That as per the terms and conditions of the buyer's agreement, the complainants was under a contractual obligation to make timely payment of all amounts payable under the buyer's agreement, on or before the due dates of payment failing which the respondent is entitled to levy delayed payment charges in accordance with clause 1.2(c) read with clauses 12 and 13 of the buyer's agreement.
- xii. That in the meanwhile, the respondent registered the project under the provisions of the Act. The project had been initially registered till 31.12.2018. Subsequently, the registration of the project was extended up till 31.12.2019. In the meanwhile, the respondent completed construction of the tower in which the unit in question is situated within the original period of

registration under the Act and applied for the occupation certificate on 31.12.2018.

xiii. That upon receipt of the occupation certificate, the respondent offered possession of the unit in question to the complainants vide letter dated 31.05.2019. The complainants was called upon to remit balance amount as per the attached statement and also to complete the necessary formalities and documentation so as to enable the respondent to hand over possession of the unit to the complainants. It is pertinent to mention herein that compensation amounting to Rs.3,75,929/- was also credited to the complainants although in accordance with clause 16(c) of the buyer's agreement, the complainants, being in default of the buyer's agreement is/was not entitled to any compensation from the respondent. Moreover, an amount of Rs.78,832/- was credited to the complainants on account of Anti-Profiteering and Rs.6,552/- was credited to the complainants on account of Early Payment Rebate (EPR). However, the complainants are refrained from taking possession of the unit on false and frivolous pretexts and have instead proceeded to file the present false and frivolous complaint.

xiv. That it is evident that the entire case of the complainants is nothing but a web of lies and the false and frivolous allegations have been made against the respondent. The respondent has duly completed construction of the unit in question and has also offered possession of the same to the complainants within the time period stipulated under the buyer's agreement. There is no default or lapse on the part of the respondent.



xv. That it is submitted that several allottees, including the complainants had defaulted in timely remittance of payment of installments which was an essential, crucial and an indispensable requirement for conceptualization and development of the project in question. 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 whereas enormous business losses befall upon the respondent. The respondent, despite default of several allottees, has diligently and earnestly pursued the development of the project in question and has constructed the project in question as expeditiously as possible. Therefore, there is no default or lapse on the part of the respondent and there is no equity in favour of the complainants. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainants are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

E. Jurisdiction of the authority:

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

F.I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana 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.

F.II Subject-matter jurisdiction

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

Section 11(4)(a)

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

The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.

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.

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

F. Findings on the objections raised by the respondent:

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

14. 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."

15. Also, in appeal no. 173 of 2019 titled as **Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahliya**, 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."

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

F.II Objection regarding the complainants being investors.

17. The respondent took a stand that the complainants are investors and not consumers and therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. 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 complainants are buyers and they have paid a total price of Rs.1,24,70,407/- 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;"

18. 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 complainants, it is crystal clear that the complainants are allottees 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.

G. Findings on the relief sought:

19. The relief sought by the complainant-promoter in complaint no. 377 of 2022 is to direct the respondent-allottees to take the possession on payment of outstanding dues whereas the relief sought by the complainants-allottees in its counter claim i.e., complaint no. 1944 of 2022 is of handing over of possession of the unit and delayed possession charges along with interest. The common issue in both the complaints is handing over of possession.
20. In the present matter the promoter has proposed to hand over the possession of the apartment according to clause 14(a) of the BBA within a period of 36 months from date of start of construction i.e., 19.06.2013. The due date of possession comes out to be 19.06.2016. Since, in the present matter the BBA incorporates conditional grace period/extended period of 5 months in the possession clause for applying and obtaining the completion certificate/occupation certificate in respect of the unit and/or the project. 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 Babita 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:

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"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."

21. 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 19.11.2016 including grace period of five months.
22. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants-allottees 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]

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(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.

23. 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.
24. 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., 08.05.2025 is @ 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
25. 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.
26. 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.
27. The promoter filed a complaint before the authority bearing no. CR/377/2022 on 28.01.2022 and thereafter the allottees also filed a complaint bearing no. CR/1944/2022 on 28.04.2022. Both these complaints were clubbed together in order to avoid conflicting orders. The allottees were allotted unit no. GGN-22-1101, 11th floor, Tower no.-22 on 02.05.2013 having an area of 1650 sq. ft. as per clause 14(a) of the BBA, the subject unit was to be handed over on or before 19.11.2016. The

respondent started raising demands as per the schedule of payment and the complainants started paying the instalments as per the payment plan and paid a considerable amount of Rs.1,24,70,407/- against the sale consideration of Rs.1,28,27,047/- except for the last instalment of which is to be paid on intimation of possession.

28. The unit of the allottees was supposed to be handed over on or before 19.11.2016, however, the promoter has received the occupation certificate on 30.05.2019 and thereafter, the possession was offered to the allottees on 31.05.2019. Thus, it can be said that there is a substantial delay of almost 3 years in offering of possession and the promoter is liable to pay delayed possession charges along with interest for the delayed period. Now the question arises whether the delay possession charges are to be adjusted before demanding the outstanding dues or vice versa?
29. The allottees have paid Rs.1,24,70,407/- against the sale consideration of Rs.1,28,27,047/- and if delay possession charges for a period of 31 months is adjusted hardly any amount is left to be paid by the complainants. Thus, the respondent is directed to issue a revised statement of accounts after adjusting the delayed possession charges.
30. 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-promoter 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 19.11.2016 but the offer of possession was made on 31.05.2019 after a delay of almost 3 years. 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-promoter 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., 19.11.2016 till offer of possession (31.05.2019) after obtaining occupation certificate plus two months i.e., 31.07.2019 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.4,61,313/- (Rs.3,75,929/- as delay compensation, Rs.78,832/- on account of Anti-Profitteering and Rs.6,552/- as Early Payment Rebate) already paid by the respondent shall be adjusted.

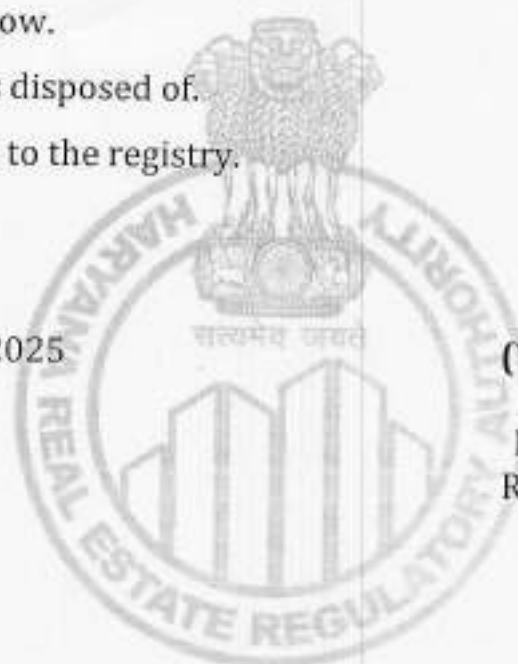
H. Directions of the authority :

31. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondent is directed to pay interest to the complainants 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., 19.11.2016 till offer of possession (31.05.2019) after obtaining occupation certificate plus two months i.e., 31.07.2019 as per section 18(1) of the Act of 2016 read with rule 15 of the rules after adjusting an amount of Rs.4,61,313/- already paid on account of delay compensation/Early Payment Rebate.
 - ii. The respondent is directed to issue fresh statement of accounts within 15 days of this order after adjustment of delayed possession charges and amount already paid by the respondent.



- iii. The complainants are directed to take the possession within next 30 days on payment of outstanding amount, if any remains, after adjustment of afore-mentioned charges and the respondent-promoter shall handover the possession and get the conveyance deed executed in terms of Section 17 of the Act of 2016.
- iv. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
32. Complaint stands disposed of.
33. File be consigned to the registry.

Dated: 08.05.2025



V.I. 
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM