

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

**Complaint no.:** 5027 of 2023  
**Date of filing of complaint:** 30.10.2023  
**Date of order:** 08.05.2025

1. Ankita Garg
2. Tarun Kumar Mittal

**Complainants**

**Both R/o:** - Amber 103, First Floor, Emerald  
Hills Floors, Sector-65, Gurugram-122018

**Versus**

Emaar India Ltd. (formerly known as  
Emaar MGF Land Ltd.)

**Respondent**

**Regd. office at:** ECE House, 28, Kasturba  
Gandhi Marg, New Delhi-110001

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

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Shri Varun Chugh (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

*An*

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 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	"Emerald Hills Floors", Sector 65, Gurugram, Haryana
2.	Nature of project	Residential
3.	DTCP License no.	i. 10 of 2009 dated 21.05.2009 valid up to 20.05.2019 ii. 113 of 2011 dated 22.12.2011 valid up to 20.12.2024
4.	Unit no.	EHF-267-A-FF-103, Block/sector-Amber, 1 <sup>st</sup> floor (As per page no. 19 of the complaint)
5.	Unit area	1380 sq. ft. (Super Area) (As on page no. 19 of the complaint)
6.	Date of execution of buyer's agreement	17.03.2010 (As per page no. 17 of the complaint)
7.	Nomination letter	27.04.2017 (As per page no. 140 of the reply)
8.	Possession clause	<b>13. POSSESSION</b> <b>(i) 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 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 Floor within 27 months from the date of execution of</i>





		<i><b>this agreement. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of six (6) months, for applying and obtaining the occupation certificate in respect of the floor and/or the project.</b></i> (Emphasis supplied) (As on page no. 32 of the complaint)
9.	Due date of possession	17.09.2012 (Note: Due date to be calculated 27 months from the date of execution of the buyer's agreement i.e., 17.03.2010 plus grace period of 6 months )
10.	Total sale consideration	Rs.56,01,363/- (As per SOA on page no. 147 of the reply)
11.	Amount paid by the complainants	Rs.56,01,362/- (As per SOA on page no. 147 of the reply)
12.	Occupation certificate	03.12.2018 (As per page no. 141 of the reply)
13.	Offer of possession	22.12.2018 (As per page no. 55 of the complaint)
14.	Indemnity cum undertaking	04.01.2019 (As per page no. 150 of the reply)
15.	Unit handover letter	01.02.2019 (As on page no. 153 of the reply)
16.	Conveyance deed	26.02.2019 (As per page no. 63 of the complaint)

**B. Facts of the complaint:**

3. The complainants have made the following submissions in the complaint:
  1. That initially, the property in question i.e., floor bearing no. EHF-267-A-FF-103 (First Floor) admeasuring 1380 sq. ft. in the project of the respondent i.e., Emaar India Limited, known as "Emerald Hills Floors" situated at Sector-65, Gurugram was booked by Sh. Mukul Harmilapi and Smt. Anuja Harmilapi.

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- II. That thereafter, on 17.03.2010, the above-named person entered into a builder buyer's agreement with the respondent, by virtue of which the respondent allotted the afore-mentioned unit along-with car parking space to them.
- III. That subsequent thereto, in April 2017, the above-named persons sold the property in question to the complainants herein had purchased the said property (Floor) and the property was later assigned to the complainants by virtue of the assignment letter dated 27.04.2017.
- IV. That, in the said buyer's agreement dated 17.03.2010, the respondent had categorically stated that the possession of the said floor would be handed over within 27 months from the date of signing of the builder buyer's agreement, with a further grace period of another 6 months. Moreover, at the time of transferring the floor in question, the complainants were further coerced by the respondent to sign affidavits/indemnity-cum-undertaking, in favour of the respondent wherein the complainants were required to undertake, not to claim or raise any compensation delay in handing over possession of the property.
- V. That, the said buyer's agreement and the indemnity cum undertaking are totally one sided, which impose completely biased terms and conditions upon the complainants, thereby tilting the balance of power in favour of the respondent, which is further manifested from the fact that the delay in handing over the possession by the respondent would attract only a meagre penalty of Rs.10/- per sq. ft. on the super area of the flat, on monthly basis, whereas the penalty for failure to take possession would attract



holding charges of Rs.10/- per sq. ft. and 15% penal interest per annum compounded quarterly on the unpaid amount of instalment due to the respondent.

- VI. That the floors were sold by representing that the same will be luxurious ones however all such representations seem to have been made in order to lure complainants to purchase the floor at extremely high prices. There are various deviations from the initial representations.
- VII. That the respondent has breached the fundamental term of the contract by inordinately delaying in delivery of the possession by 78 months. It is pertinent to mention here that the possession of the property in question was finally offered on 22.12.2018.
- VIII. That the complainants without any default, had been timely paying the instalments towards the property, as and when demanded by the respondent towards the aforesaid residential floor in the project and after making the balance payment which was to be made at the time of offering of possession, got the property transferred in their name on 26.02.2019.
- IX. That the respondent had promised to complete the project by June 2012, excluding the grace period of six months. The respondent has breached the fundamental term of the contract by inordinately delaying in delivery of the possession and not providing adequate compensation in line with the provisions of the Act of 2016. In fact, the respondent has even failed to provide compensation as per the terms of the builder buyer's agreement for the entire period of delay in handing over the possession of the unit.

- X. That the respondent has not acknowledged the requests of the complainants in regard to the delayed compensation. In fact, the promised amenities are missing. The complainants were made to make advance deposit on the basis of information contained in the brochure which is false on the face of it.
- XI. That the respondent has committed various acts of omission and commission by making incorrect and false statement in the advertisement material as well as by committing other serious acts as mentioned in preceding paragraph. The project has been inordinately delayed. The respondent has resorted to misrepresentation. The complainants therefore, seek direction to the respondent to pay interest @ 18% p.a. as payment, towards delay in handing over the property in question.

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

4. The complainants have sought following relief(s):
- Direct the respondent to pay the interest @ 18% p.a. as payment, towards delay in handing over the property in question as per provisions of the Act of 2016 and Rules, 2017;
  - Direct the respondent to pay a sum of Rs.50,000/- to the complainants towards the cost of the litigation.
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 own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint.
- III. That the complainants have not approached the Hon'ble Authority with clean hands. That the Hon'ble Authority has no jurisdiction to deal with the present matter and the complaint is not maintainable.
- IV. That the complainants are not "allottees" but investors 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 complainants as a speculative investment and not for the purpose of self-use as their residence. Therefore, no equity lies in favour of the complainants.
- V. That the original allottees, Sh. Mukul Harmilapi and Smt. Anuja Harmilapi approached the respondent and expressed interest in booking of an independent floor in the residential plotted colony developed by the respondent. Prior to approaching the respondent, the original allottees had conducted extensive and independent enquiries regarding the project and only after being fully satisfied with regard to all aspects of the project, they took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question.
- VI. That thereafter the original allottees applied for provisional allotment via application form and were consequently allotted unit no. EHF-267-A-FF-103, admeasuring 1380 sq. ft. vide provisional

allotment letter dated 13.07.2009. That thereafter, the buyer's agreement was executed on 17.03.2010 with the original allottees. Thereafter, the original allottees transferred the unit to the subsequent purchasers, namely, Ankita Garg and Tarun Kumar Mittal, i.e., the complainants vide agreement to sell dated 12.03.2017 and thereafter, the complainants' nomination was confirmed vide nomination letter dated 27.04.2017.

VII. That as per clause 13(i) of the buyer's agreement, the due date of possession was subject to the allottees having complied with all the terms and conditions of the buyer's agreement. There being a contractual relationship, reciprocal promises are bound to be maintained. The rights and obligations of allottees as well as the builder 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.

VIII. That despite all the unforeseen and unavoidable circumstances, the respondent did not default and instead completed the construction of the project without having regular payment of monies against the unit. That in case of delays caused in making payments against the unit, the proposed due date of delivery of possession is liable to be further extended. That as is known and practically understood that regular and timely payments by the allottees are pertinent towards the completion of a real estate project, yet, without the same being done in the present case, the respondent has shown an exemplary conduct as a real estate promoter which should be duly taken into account. Upon the defaults caused in making timely payments after payment request letter dated 26.07.2009, 01.09.2015, 06.01.2017,

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04.04.2017, 07.06.2017, 06.04.2018 and 08.05.2018, also several reminders were served dated 18.10.2017, 12.01.2018, 01.05.2018 and 25.06.2018.

- IX. The respondent was adversely affected by various construction bans, 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 and other force majeure circumstances, yet, 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.
- X. That without admitting or acknowledging in any manner the truth or legality of the allegations levelled by the complainants and without prejudice to the contentions of the respondent, it is submitted that the project has got delayed on account of the above-mentioned reasons which were/are beyond the power and control of the respondent and hence the respondent cannot be held responsible for the same. The respondent had the right to suspend the construction of the project upon happening of circumstances beyond the control of the complainants as per clause 13(ii) however, despite all the hardships faced by the respondent, the respondent did not, suspend the construction and managed to keep the project afloat through all the adversities.
- XI. That despite the innumerable hardships being faced by the respondent, the respondent completed the construction of the

project and applied for part occupation certificate vide an application dated 25.09.2018 before the concerned Authority and successfully attained the Occupation certificate dated 03.12.2018. It is respectfully submitted that once an application for grant of occupation certificate is submitted to the concerned statutory authority, the respondent ceases to have any control over the same. The grant of occupation certificate is the prerogative of the concerned statutory authority and the respondent does not exercise any influence in any manner whatsoever over the same. No fault or lapse can be attributed to the respondent in the facts and circumstances of the case. Therefore, it is respectfully submitted that the time period utilised by the concerned statutory authority for granting the occupation certificate is liable to be excluded from the time period utilized for the implementation and development of the project.

- XII. That thereafter, and only after obtaining the requisite permissions, the respondent legally offered the possession of the unit to the complainants on 22.2.2018. The complainants thereafter executed the indemnity cum undertaking for possession on 04.01.2019 and subsequently, the physical possession of the unit was taken on 01.02.2019. It needs to be categorically noted that the complainants have taken the peaceful possession after having satisfied themselves with regard to the measurement, location, dimension and development etc. of the unit and the complainants had no claim of any nature whatsoever against the company with regard to the size, dimension, area, location and legal status of the unit.



- XIII. That thereafter, the absolute title over the unit was transferred to the complainants through conveyance deed dated 26.02.2019. That the complainants after having executed the conveyance deed for over 4 years, taking peaceful possession of the unit, and having enjoyed such possession for such a long period, should not be entitled to claim the interest on the delayed possession. Thus, the present complaint is devoid of any cause of action and is nothing but an abuse process of Law. It is submitted that a contract is deemed to be concluded after execution of the conveyance deed and hence the present complaint is liable to be dismissed with heavy costs. That after having slept on their rights for a number of years, the complainants cannot be rightly allowed to have the present claims. The transaction between the complainants and the respondent stands concluded and no right or liability can be asserted by the respondent or the complainants against the other.
- XIV. That the present complaint is a frivolous attempt of the complainants to extract monies out of the respondent. That there exists no cause of action for the complainants to file the present complaint. That the respondent has made good on all parts of his responsibilities and obligations under the agreement read with the transfer documents and under the law, rules and regulations. That for the reason of non-existence of an existing cause of action, this complaint is liable to be dismissed on this ground alone.
- XV. That without accepting the contents of the complaint in any manner whatsoever, and without prejudice to the rights of the respondent, delayed interest if any has to be calculated only on the amounts deposited by the allottees/complainants towards the basic principal

amount of the unit in question and not on the amount credited by the respondent, or any payment made by the allottees/complainants towards delayed payment charges or any taxes/ statutory payments, etc. That additionally, it is submitted that the respondent has credited Rs.1,20,786/- and Rs.167/- to the complainants on account of anti-profiting EPR credit respectively. This amount is bound to be adjusted.

XVI. That in light of the *bona fide* conduct of the respondent, the peaceful possession having been taken by the complainants, compensation taken by the complainants at the time of offer of possession, non-existence of cause of action and the frivolous complaint filed by the complainants, this complaint is bound be dismissed with 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 complainants at a later stage.

### **F. Findings on objections raised by the respondent:**

#### **F.1 Objection regarding the agreement being concluded on execution of conveyance deed**

10. The respondent has raised an objection that the instant complaint is not maintainable as the agreement dated 17.03.2010 is concluded upon execution of conveyance deed dated 26.02.2019, the complainants are now estopped from raising these belated claims/demands as they

themselves had acknowledged and accepted that *"that the vendee confirms that the vendee shall not raise any objection or make any claims on account of inconvenience, if any, which may be alleged to be suffered by the vendee due to such developmental/ construction or its incidental/related activities."*

11. The Authority observed that though the conveyance deed has been executed on 26.02.2019 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 17.09.2012 but the same was offered on 22.12.2018 after a delay of more than 6 years. Therefore, the complainants are entitled for delay possession charges for the delayed period as statutory right of the complainants-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 complainants being investors.**

12. 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 has paid a total



price of Rs.56,01,362/- 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;"*

13. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement dated 17.03.2010, 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.

**F.III Objection regarding delay due to force majeure circumstances**

14. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various construction bans, 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. But all the pleas advanced in this regard are devoid of merit. As 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 are to be considered while fixing the timelines for completion of 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. Findings on the relief sought by the complainants:**

**G.1 Direct the respondent to pay the interest @ 18% p.a. as payment, towards delay in handing over the property in question as per provisions of the Act of 2016 and Rules, 2017;**

15. In the present complaint, the complainants intends 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."*

16. Clause 13(i) of buyer's agreement dated 17.03.2010 provides for handing over of possession and is reproduced below:

**13. POSSESSION**

**(i) 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 floor within 27 months from the date of execution of this agreement. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of six months, for applying and obtaining the occupation certificate in respect of the floor and/or the project.*

**(Emphasis supplied)**

17. 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 a period of 27 months from the date of execution of agreement with grace period of 6 months.



18. 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:

*"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."*

19. 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 17.09.2012 including grace period of 90 days.
20. The counsel for the respondent stated vide during proceedings of the day dated 08.05.2025 stated that the complaint is barred by limitation as the offer of possession was made on 22.12.2018 and the conveyance deed has been executed on 26.02.2019. However, the counsel for the complainants vide proceedings of the day dated 08.05.2025 mentioned that the complainants are seeking DPC after computing the zero period allowed by Hon'ble Supreme Court of India on 10.01.2022 in M.A. No. 21 of 2022 of suo-moto writ petition Civil No. 3 of 2020. And the complaint

is within limitation after computing the said zero period allowed by the Supreme Court of India. The period from 15.03.2020 to 28.02.2022 was quoted as zero period vide order dated on 10.01.2022 in M.A. No. 21 of 2022 of suo-moto writ petition Civil No. 3 of 2020 by Hon'ble Apex Court.

21. **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.*

22. 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.
23. 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%.
24. 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. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

25. 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.

26. 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 27.04.2017. The Authority has decided the same issue on 24.09.2024 in **complaint no. CR/ No. 1760 of 2022 case titled as Monika Sharma and Pankaj Kumar Jangid Vs Emaar India Limited**, wherein it was held that the complainant-allottee is entitled for delay possession charges from the date of nomination letter till offer of possession after obtaining occupation certificate plus two months or actual handing over of possession, whichever is earlier. The relevant para of said order is extracted below:

*30. The authority is of the view that the time period for handing over the possession as committed by the builder as per the relevant clause of builder buyer's agreement and the commitment of the promoter regarding handing over of possession of the unit is taken accordingly. The new timeline indicated in respect of ongoing project by the promoter while making an application for registration of the project does not change*

*the commitment of the promoter to hand over the possession by the due date as per the builder buyer's agreement and the promoter is liable for the consequences and obligations arising out of failure in handing over possession by the due date as committed by him in the builder buyer's agreement and is liable for the delayed possession charges as provided. in proviso to section 18(1) of the Act. 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. The same issue has been dealt by Hon'ble Bombay High Court in case titled as Neelkamal Realtors Suburban Pvt. Ltd. (supra) wherein it was held that the RERA Act does not contemplate rewriting of contract between the allottee and the promoter. The relevant para of the judgement is reproduced below:*

*"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..."*

*31. However, complainants were well aware about the fact that the construction of the tower where the subject unit is situated has not been completed and occupation certificate qua that part of project is yet to be obtained. Further, they still chosen to proceed with execution of the agreement voluntarily which means that the complainant had accepted the factum of the delay. Moreover, they have not suffered any delay as the subsequent allottee/complainants herein came into picture only on 04.12.2017 when the subject unit was endorsed in his favour. Hence, in such an eventuality and in the interest of natural justice, delay possession charges can only be granted to the complainant from the date of nomination dated 04.12.2017 i.e., date on which the complainant stepped into the shoes of the original allottee.*

27. Thus, the complainants are entitled to delayed possession charges w.e.f. 27.04.2017 i.e., date on which the complainants stepped into the shoes of the original allottees.

28. The respondent in its reply mentioned that the respondent has credited Rs.1,20,786/- and Rs.167/- to the complainants on account of anti-profiting and EPR credit respectively.

29. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. The due date of handing over of possession



comes to 17.09.2012 but the offer of possession was made on 22.12.2018 and conveyance deed was executed on 26.02.2019. 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 date of nomination letter i.e., 27.04.2017 till offer of possession (03.12.2018) after obtaining occupation certificate plus two months i.e., 03.02.2019 or actual taking over of possession i.e., 01.02.2019, 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. Since the physical possession has been taken over on 01.02.2019 being earlier, the complainants are entitled for delayed possession charges from 27.04.2017 to 01.02.2019. The amount of Rs.1,20,953/- paid by the respondent on account of Anti- Profiting and EPR credit shall be adjusted.

**G.II Direct the respondent to pay an amount of Rs.50,000/- to the complainants as cost of present litigation.**

30. The complainants are seeking relief w.r.t. compensation in the above-mentioned reliefs. The Hon'ble Supreme Court of India in *civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

**H. Directions of the authority:**

31. 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 delay interest to the complainants against the paid-up amount after at the prescribed rate i.e. 11.10% p.a. for every month of delay from the date of nomination letter i.e., 27.04.2017 till handing over of possession i.e., 01.02.2019, 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.1,20,953/- already paid on account of Anti- Profiting and EPR credit.
  - 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.
32. Complaint stands disposed of.
33. File be consigned to registry.

**HARERA**  
GURUGRAM  
V.I.   
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.05.2025