

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

Complaint no. : 7205 of 2022

Date of decision : 15.04.2025

1. Shri Shyam Narain Gupta
2. Mrs. Pratibha Gupta
Both RR/o: House No. 154, Sector-13, Hisar Haryana.

Complainants

Versus

M/s Emaar India Ltd.
(Formerly known as Emaar MGF Land Ltd.)
Address: Emaar MGF Business Park, M.G. Road, 2nd
Floor, Mehrauli Road, Sikandarpur Chowk, Sector-28,
Gurugram-122002, Haryana.

Respondent

Coram:

Shri Arun Kumar
Shri Ashok Sangwan

**Chairman
Member**

Appearance:

Shri Gaurav Bhardwaj
Shri Harshit Batra

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint has been filed by the complainant/allottee in Form CRA 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 to the allottee as per the agreement for sale executed inter se them.
- 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 Gardens, Sector 83, Gurugram, Haryana
2.	Total area of the project	21.90 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	108 of 2010 dated 18.12.2010
	Validity of license	17.12.2023
	Licensee	Logical Developers Pvt. Ltd. and 2 others
	Area for which license was granted	21.9 acres
5.	HRERA registered/not registered	Registered vide no.330 of 2017 dated 24.10.2017 (1,2,6,8 to 12 and other facilities and amenities)
	HRERA registration valid up to	31.12.2018
	HRERA extension of registration vide	02 of 2019 dated 02.08.2019
	Extension valid up to	31.12.2019
6.	Unit no.	PGN-05-12A03, 12 th A floor, building no. 05 [Page no. 83 of reply]
7.	Area of the unit	1850 sq. ft.
8.	Provisional allotment letter issued on	31.01.2011 [Page no. 41 of reply]
9.	Date of execution of buyer's agreement	20.05.2011 [Page no. 81 of reply]
10.	Possession clause	10. POSSESSION (a) Time of handing over the Possession <i>Subject to terms of this clause and subject to Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under</i>

		<p>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 36 (Thirty six) months from the date of start of construction, subject to timely compliance of the provisions of the Buyer's Agreement by the Allottee. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of 3 (three) months, for applying and obtaining the completion certificate/ occupation certificate in respect of the Unit and/or the Project.</p> <p>(Emphasis supplied)</p> <p>[Page no. 90 of reply]</p>
11.	Date of start of construction as per statement of account dated 21.06.2023 at page 160 of reply	09.08.2012
12.	Due date of possession	09.11.2015 [Note:- 3 months grace period is included]
13.	Total consideration as per statement of account dated 21.06.2023, at page 160 of reply	Rs.98,54,689/-
14.	Total amount paid by the complainant as per statement of account dated 21.06.2023, at page 160 of reply	Rs.98,54,691/-
15.	Occupation certificate granted on	10.01.2018 [Page no. 116 of reply]
16.	Offer of possession	21.03.2018 [Page no. 122 of reply]

17.	Unit hand over letter dated	10.09.2018 [Page no. 133 of reply]
18.	Conveyance deed dated	17.01.2019 [Page no. 135 of reply]

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:

- i. That somewhere around mid-2010, the respondent advertised about its new project namely "Palm Gardens" situated in Sector-83, District Gurgaon. The respondent painted a rosy picture of the project in their advertisement making tall claims and representing that the project aims at providing exclusive luxury homes featuring highest design standards and premium amenities. The tag line of the project as advertised by the respondent was- *"MORE HAPPINESS PER SQUARE FOOT"*.
- ii. That believing the representations of the respondent and on the lookout for an adobe for himself and his family, on 12.01.2011, the complainants booked a unit in the said project by making a payment of Rs.7,50,000/- vide receipt no. 645612 of unit no PGN-05-12A03 in the said project. The complainant kept on making payment as and when demanded by the respondents. Till date the complainant has paid a total sum of Rs.99,19,859/- towards the unit in question, as and when demanded, as against a total sale consideration of Rs.98,24,689/-.
- iii. That as per clause 10(a) of the said buyer's agreement, the respondent proposed to handover the possession of the unit in question within a period of 36 months from 09.08.2012 i.e., the date of start of construction along with grace period of 3 months, i.e. by 09.11.2015. However, the respondent failed in handing over possession in accordance with the said agreement. The respondent demanded and got paid from the complainants a sum of Rs.24,16,313/- on different dates even before the

start of construction starting from the date of booking i.e. 12.01.2011 till date of start of excavation. However, the respondent failed in handing over possession in accordance with the said agreement. That after, the complainant contacted the respondent on several occasions regarding wrongful demand of parking charges and also some unfair and arbitrary clauses in the agreement. Also, a clarification was sought on the development of project and the date of delivery. However, no satisfactory answer was received from the respondent. As per builder buyer agreement, the due date of handing over possession comes out to be 09.11.2015. However, the respondent failed in handing over the same as per due date of possession.

- iv. That the complainant vide several E-mails requested the respondent to handover the possession of the unit after completing the remaining construction of the project and the unit as the project was nowhere habitable till September, 2020 but the respondent failed to make the said project habitable. It is further to note that at the time of booking, the respondent assured regarding the approach road for the project from the National Highway but till date the same has not been constructed.
- v. That the respondent highlighted and represented to the complainant that the Project 'Palm Gardens' shall be constructed on a land of 21.90 acre and shall have the following salient and unique features at the time of delivery of possession of their unit:

- 24-metre road leading to Palm Gardens with direct road connectivity to NH-8 and Dwarka Expressway;
- 1.5 acre mini golf course;
- Vast open Central Greens spread over 8 acre;
- Interconnected theme parks and formal concept gardens;
- Recreational and sports facilities in the form of modern community center and club consisting of swimming pool, splash pool, bowling alley, tennis, badminton and basketball courts, Gymnasium;

- 3km jogging track;
 - Segregation of pedestrian and vehicular movements;
 - Dedicated play area for children;
 - A Solar Power Plant, a Solar Photovoltaic Power Plant, LED Lamps for the project and buildings to save on recurring electricity expenditure. It is worthwhile to note that the electricity expenditure for common areas and facilities and amenities is being borne by Complainants and other residents in the form of payment of Common Electricity Expenditure (CAE) every month;
 - Construction of ramps in common areas and facilities.
- vi. That the complainant is aggrieved on account of grossly staggering and grave deficiencies in their unit and project Palm Gardens. The complainant has been severely traumatized by the gross deficiencies in the project and unit. These have impacted him physically, financially and psychologically as follows:
- That the net area on which 'Palm Gardens' is constructed is less than an area of 21.90 acre which was represented by the respondent and agreed upon by him at the time of booking the unit by the complainants and execution of buyer's agreement. Palm Gardens was advertised and licensed as to be developed as a residential group housing colony on the land measuring 21.90 acre. But now it is found to be constructed on a net area of only 17.84 acre which is 4.06 acre less than area of 21.90 acre. It was agreed that Palm Gardens was to be developed on a big land parcel of 21.90 acre as was mentioned in the brochures, buyer's agreement etc. The respondent sold the project Palm Gardens and unit therein to the complainant by making repeated representations that Palm Gardens is being developed on a vast land parcel of 21.90 acre. Accordingly, relying upon respondent's declarations and representations about big size of the project, the sale price was agreed upon. But now it has traversed that respondent had wrongly included the area consumed by 24 meter wide road and similar HUDA roads running outside the premises and other structures for public use as being part of Net area of 21.90 acre of Palm Gardens. By doing this the respondent violated the rules and regulations laid down by Department of Town and Country Planning, Haryana and other terms and conditions of its licences granted by Government of Haryana.
 - That the respondents have failed to provide a metalled road access to Palm Gardens. Moreover it has not provided a direct road

connectivity to NH-8 and Dwarka Expressway that was advertised as to be a salient and unique feature of this project. From Palm Gardens there is no direct road connectivity to even any main road in the Sector/Area. Location of Palm Gardens at the important junction of NH-8 and Dwarka Expressway and easy walkable connectivity was highlighted as a salient and unique feature of Palm Gardens. Due to absence of a direct road connectivity to even main roads inside the Sector/Area the residents of Palm Gardens including the complainant has to travel extra 3.5kms and then have to take a rough unplanned un-metalled tortuous path (kutcha rasta) to reach their homes in Palm Gardens. This tortuous un-metalled path (kutcha rasta) traverses through unauthorized slums that have mushroomed around that path (kutcha rasta). Being an unplanned rough un-metalled path (kutcha rasta) it is dark, unlit, full of ditches and potholes and slush.

- That the respondents represented and advertised a green area in brochures, e-brochure, welcome letter, buyer's agreement, site plans and many other advertisements (in electronic and print media) by marking it as an eight acre Central Greens Area. On survey/inspection the green area represented as Central Greens is found to be 3.65 acre and not 8 acre. It was found out by complainants and their architect that site plan of Palm Gardens submitted for approval to and sanctioned by appropriate authorities in Government of Haryana itself shows that total aggregate green area spread all over the project Palm Gardens is of only 3.8936 acres size i.e. 15756.920 sq.mt (17.78% of the Net Site Area). This total green area of 3.8936 acres is scattered over whole of Palm Gardens in different small pockets of green patches. Respondent never intended to provide eight acre green area in the project Palm Gardens therefore no such green area of 8 acre was even planned or marked in the site and area details plan of Palm Gardens submitted to and sanctioned by Department of Town and Country Planning (DTCP) Government of Haryana. This site plan of Palm Gardens was sanctioned by DTCP Haryana on 22.03.2012.
- That the respondent falsely and intentionally misrepresented to them that entire green area shown in the brochures and buyer's agreement etc. belongs to him and is owned by him and therefore forms central greens area in the project. But later during survey/inspection, that green area was found out to be a property of some other third party. (which has no relation with Respondent or Project) Material fact is that the land parcel/area that would have contributed to form 8 acre Central green area was never acquired by respondent till date while

that had been falsely represented and wrongly shown to be part of premises of Palm Gardens.

- vii. That the aforesaid irregularities clearly elucidate the misconduct on the part of respondent and that the respondent clearly violated its brochures, advertisements and representations made to genuine innocent home buyers. This is clear violation of Section 12 of the Real Estate (Regulation and Development) Act, 2016. That it is pertinent to note that while under clause 1.2 (c) of the buyer's agreement, upon delay payment by the allottee, the respondent can charge 24% simple interest per annum, however, on account of delay in handing over possession by the respondent, he is liable to pay merely Rs.7.50/-per sq. ft. of the super area for the period of delay as per clause 13(a) of the said agreement. It is submitted that such clauses are totally unjust, arbitrary and amounts to unfair trade practice as held by the Hon'ble NCDRC in the case titled as ***Shri Satish Kumar Pandey & Anr. v/s M.s Unitech Ltd. (14.07.2015)*** as also in the judgment of Hon'ble Supreme Court in ***Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and ors. (W.P 2737 of 2017)***.
- viii. That the respondent highlighted and communicated that it will deliver the said unit to the complainant after completing with specifications and building/site layouts as mentioned in brochure, buyer's agreement, building/site layout plans etc. well within 39 months of start of construction work but there was an inordinate delay in handing over the possession of the said unit.
- ix. That on 27.10.2018, the complainant received a handover advice letter from the respondent after a delay of around 3 years from the due date of possession of the unit. That the respondent is liable to pay delayed possession charges for every month of delay at the same interest rate at

which he charged interest on account of delayed payment by the complainant.

- x. That the respondent has failed to complete the project on time, resulting in extreme kind of financial hardship, mental distress, pain and agony to the complainant along with the delay in handing over the possession of the said unit, the respondent had failed in providing the above mentioned several amenities, services as promised by the respondents at the time of execution of the agreement.
- xi. That the present complaint has been filed in order to seek interest on the delayed possession along with the other reliefs as mentioned in the Relief clause of the complaint. That it is pertinent to bring to the notice of this Authority that in the previous judgments issued by this Authority titled as complaint no. 349 of 2018 and Complaint no. 268 of 2018 relating to same project, the Authority granted delayed possession charges at the prescribed rate from the due date of possession till handing over of possession. Accordingly, the same is requested to be granted in the present case.

C. Relief sought by the complainants

- 4. The complainants have filed the present complaint for seeking following reliefs:-
 - i. Direct the respondent to make the payment of interest on account of delayed possession as per the Act of 2016;
 - ii. Direct the respondent to make the payment of HVAT;
 - iii. Direct the respondents not to charge holding charges;
 - iv. Direct the respondents to charge delay payment charges at equitable rate of Interest.

5. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act and to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has raised certain preliminary objections and has contested the present complaint on the following grounds:
- i. That the complainants have got 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 20.05.2011, as shall be evident from the submissions made in the following paras of the present reply. The respondent craves leave of this Authority to refer to and rely upon the terms and conditions set out in the buyer's agreement in detail at the time of the hearing of the present complaint, so as to bring out the mutual obligations and the responsibilities of the respondent as well as the complainants.
 - ii. That the complainants are estopped by their own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. That the respondent has already offered possession of the unit in question to the complainants, who have taken the possession of the unit and also got the conveyance deed executed in their favour, as such, the respondent has already complied with its obligations under the buyer's agreement. The reliefs sought in the false and frivolous complaint are barred by estoppel. It is relevant to submit that the conveyance deed of the unit in question had already been executed in favour of the complainants as early as on 17.01.2019, whereas the present complaint has been filed on 09.11.2022, i.e. after almost 3 years 9 months and 23 days. The lack of bona fide of the complainants are apparent that after

conclusion of the entire transaction on the execution of the conveyance deed and the completion of all obligations of the respondent, it chose to remain silent for such a long period and have approached this Authority to extort money. The complainants chose never to raise any claim towards delay possession charges and were agreeable to the compensation so awarded by the respondent in terms of the buyer's agreement. That it needs to be highlighted that respondent has credited an amount of Rs.23,536/- towards TDS, Rs.96,497/- as EDC Interest and Rs.2,95,509/- as compensation for the delay in offering the possession of the unit. Hence, it is clear from the lack of any documentary proof, whereby the complainants may have raised any such additional claim or if they may have been dissatisfied with the awarded compensation.

- iii. That the present complaint is not maintainable in law or on facts. The present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint can only be adjudicated by the Civil Court. The present complaint deserves to be dismissed on this ground alone.
- iv. That the instant complaint is barred by limitation. It is also pertinent to mention that the complainants filed the complaint before this Authority after the execution of the conveyance deed when all the terms and conditions as per the buyer's agreement stand fulfilled in the eyes of law. The present complaint has been filed only to harass the respondent and extort money. The complainants having received the offer of possession on 21.03.2018 and having executed the conveyance deed on 17.01.2019 have filed the present Complaint on 09.11.2022, i.e. after a lapse of 3 years 9 months and 23 days from the date of execution of Conveyance

Deed. In view of the facts as stated above, the present Complaint deserves to be dismissed with heavy costs.

- v. That the complainants have not come before this Authority with clean hands and have suppressed vital and material facts from this Authority. The correct facts are set out in the succeeding paras of the present reply.
- vi. That the complainants had approached the respondent and expressed an interest in booking an apartment in the residential group housing colony developed by the respondent and booked the unit in question, bearing number PGN-05-12A03, 12th floor, Tower-05 admeasuring 1850 sq. ft. situated in the project developed by the respondent, known as "Palm Gardens" at Sector 83, Village Kherki Daula, Gurugram, Haryana. That thereafter the complainants vide application form dated 12.01.2011 applied to the respondent for provisional allotment of a unit bearing number PGN-05-12A03 in the project. The complainants consciously and willfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that the complainants shall remit every installment on time as per the payment schedule. The respondent had no reason to suspect bonafide of the complainants. That the respondent issued the provisional allotment letter dated 31.01.2011 to the complainants.
- vii. That it needs to be highlighted that the complainants were not forthcoming with the outstanding amounts as per the schedule of payments. The respondent was constrained to issue payment letters and reminders to the complainants. The respondent had categorically notified the complainants that they had defaulted in remittance of the amounts due and payable by them. It was further conveyed by the respondent to the complainants that in the event of failure to remit the amounts

mentioned in the said notice, the respondent would be constrained to cancel the provisional allotment of the unit in question.

- viii. That subsequently, the respondent sent the buyer's agreement to the complainants, which was executed between the parties on 20.05.2011. That the buyer's agreement was consciously and voluntarily executed by the complainants after reading and understanding the contents thereof to their full satisfaction. That the rights and obligations of the complainants as well as the respondent 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. Clause 10(a) of the buyer's agreement provides that subject to the allottee having complied with all the terms and conditions of the agreement, and not being in default of the same, possession of the apartment would be handed over within 36 months from the date of start of construction. It has further been specified in the same clause that the respondent will be entitled to a grace period of 3 months. Clause 10(b) provides that the time period for delivery of possession shall stand extended on the occurrence of delay for reasons beyond the control of the respondent. In terms of clause 10(b)(iv) in the event of default in payment of amounts demanded by the respondent as per the schedule of payment under the buyer's agreement, the time for delivery of possession shall also stand extended. As per clause 12(c) of the buyer's agreement provides that compensation for any delay in delivery of possession shall only be given to such allottees who are not in default of their obligations envisaged under the Agreement and who have not defaulted in payment of installments as per the payment plan incorporated in the Agreement. Therefore, the complainants, being defaulters, are not entitled to any compensation from the respondent. That the complainants are conscious

and aware of the fact that they are not entitled to any right or claim against the respondent. The complainants have intentionally distorted the real and true facts and have filed the present complaint in order to harass the Respondent and mount undue pressure upon it. It is submitted that the filing of the present complaint is nothing but an abuse of the process of law.

- ix. That furthermore, in clause 12(d) of the buyer's agreement it has been specified that in case of delay caused due to non-receipt of occupation certificate, completion certificate or any other permission/sanction from the competent authorities, no compensation or any other compensation shall be payable to the allottees. It needs to be highlighted that the respondent completed construction and had submitted an application on 29.06.2017 for grant of occupation certificate before the concerned statutory authority. The occupation certificate has been granted by the concerned department vide memo dated 10.01.2018. 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 over the same. Therefore, it is respectfully submitted that the time period utilized by the concerned statutory authority for granting the occupation certificate is liable to be excluded from the time period utilized for implementation of the project.
- x. That in the meanwhile, the project was registered under the provisions of the Act. Registration Certificate granted by the Haryana Real Estate Regulatory Authority vide memo no. HRERA-142/2017/1712 dated 24.10.2017. Furthermore, the registration has been extended by this Authority vide certificate dated 02.08.2019. Without admitting or

acknowledging in any manner the truth or legality of the allegations leveled by the complainants and without prejudice to the contentions of the respondent, it is respectfully submitted that the complaint preferred by the complainants is devoid of any cause of action. It is submitted that the registration of the project was valid till 31.12.2019.

- xi. That the respondent on receipt of the occupation certificate, offered possession of the said unit to the complainant vide the letter of offer of possession dated 21.03.2018. The complainants have failed to comply with its obligations to take the possession of the unit in question. The instant complaint is a gross misuse of process of law. Therefore, no cause of action has accrued in favor of the complainants in the facts and circumstances of the case.
- xii. That the complainants did not have adequate funds to remit the balance payments requisite for obtaining possession in terms of the buyer's agreement and consequently in order to needlessly linger on the matter, the complainants refrained from obtaining possession of the unit in question. The complainants needlessly avoided the completion of the transaction with the intent of evading the consequences enumerated in the buyer's agreement. Therefore, there is no equity in favor of the complainants. Without admitting or acknowledging in any manner the truth or correctness of the frivolous allegations levelled by the complainants and without prejudice to the contentions of the respondent, that the alleged interest frivolously and falsely sought by the complainants was to be construed for the alleged delay in delivery of possession. Consequently, the complainants are liable for the consequences including holding charges, as enumerated in the buyer's agreement, for not obtaining possession.

- xiii. That the complainants approached the respondent in order to take the possession of the said unit in question. That an indemnity cum undertaking for possession dated 10.08.2018 was executed by complainants in favour of the respondent on the mutual agreed terms and conditions. The complainants have duly taken the possession of the unit in question. The conveyance deed in respect of the unit in question has also been executed. That after execution of the unit handover letter and obtaining of possession of the unit in question and after the execution of the conveyance deed, the complainants are left with no right, entitlement or claim against the respondent. 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. The instant complaint is a gross misuse of process of law. The contentions advanced by the complainant in the false and frivolous complaint are barred by estoppel.
- xiv. That the respondent has credited a sum of Rs.96,497/- as benefit as EDC interest and Rs.17,591/- on account of early payment rebate (EPR). The respondent even credited an amount to the tune of Rs.2,95,509/- as compensation for the delay in offering the possession of the unit. 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 any amount credited by the respondent, or any payment made by the allottees/complainants towards delayed payment charges (DPC) or any taxes/statutory payments etc.
- xv. That without admitting or acknowledging in any manner the truth or legality of the allegations leveled by the complainants and without prejudice to the contentions of the respondent, the project has got

delayed on account that the Contractor hired by the respondent i.e. ILFS (M/s Infrastructure Leasing & Financial Services), a reputed contractor in real estate, started raising certain false and frivolous issues with the respondent due to which they had slowed down the progress of work at site. The respondent was constrained to issue several letters to ILFS requesting it to proceed and complete the construction work in accordance with the decided schedule. However, ILFS continued with its wanton acts of instigating frivolous and false disputes for reasons best known to it. The Respondent cannot exercise any influence over the working of ILFS.

- xvi. That without admitting or acknowledging in any manner the truth or correctness of the frivolous allegations leveled by the complainants and without prejudice to the contentions of the respondent, it is submitted that the so-called interest wrongly sought by the complainants was to be construed for the alleged delay in delivery of possession. An offer for possession marks termination of the period of delay, if any. The complainants are not entitled to contend that the alleged period of delay continued even after receipt of offer for possession.
- xvii. That the several allottees, including the complainants, have 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. That the construction of the tower in which the unit in question is situated is complete and the respondent has already offered possession of the unit in question to the complainants. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

- xviii. Without prejudice to the aforesaid preliminary objections and the contention of the respondent that unless the question of maintainability is first decided, the respondent ought not to be called upon to file the reply on merits to the complaint, this reply is being filed by way of abundant caution, with liberty to file such further reply as may be necessary, in case the complaint is held to be maintainable. All the facts and submissions set out in the complaint are incorrect and are denied as if the same are specifically set out herein and traversed, except those which are specifically admitted herein. Further, the contents of the preliminary objections, set out hereinabove, should be deemed to be incorporated in reply to all paras of the Complaint as well as in reply to the list of dates.

E. Jurisdiction of the Authority

7. The preliminary objections raised by the respondent regarding jurisdiction of the authority to entertain the present complaint stands rejected. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.1 Territorial jurisdiction

8. 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 office 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

9. Section 11(4)(a) of the Act 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.

10. 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 as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the objections raised by the respondent

F.I Objection regarding non entitlement of any relief under the Act to the complainant being investors.

11. It is pleaded on behalf of respondent that complainant is not "allottee" but investor who has booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale. The authority observes that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that the preamble is an introduction of a statute and states the main aims and objects of enacting a statute but at the same time, the preamble cannot be used to

defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement, it is revealed that the complainant is buyer and has paid a considerable amount towards purchase of subject unit. At this stage, it is important to stress upon the definition of the term allottee under the Act, and 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."

12. In view of above-mentioned definition of allottee as well as the terms and conditions of the buyer's agreement executed between the parties, it is crystal clear that the complainant is allottee as the subject unit allotted to him by the respondent/promoter. The concept of investor is not defined or referred in the Act of 2016. As per definition under section 2 of the Act, there will be 'promoter' and 'allottee' and there cannot be a party having a status of 'investor'. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal No.0006000000010557 titled as *M/s Srushti Sangam Developers Pvt Ltd. Vs Sarvapriya Leasing (P) Ltd. and anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottees being an investor are not entitled to protection of this Act also stands rejected.

F.II Objection regarding the complaint being barred by limitation.

13. The counsel for the respondent submitted that the complainants have filed the present complaint on 14.11.2022 after execution of conveyance deed on 17.01.2019. Therefore, the present complaint is barred by limitation. But the

counsel for the complainants submitted that limitation is not applicable qua these proceedings, and submitted a copy of order passed Hon'ble Real Estate Regulatory Authority, Punjab wherein it has been held that the benefits under the Act are not barred by limitation.

14. Though both the parties through their respective counsel advanced submissions with regard to the maintainability of the compliant on the ground of the limitation but in view of settled proposition of law, the case of complainant cannot be thrown away being barred by limitation. As discussed earlier, the subject unit was allotted on 30.01.2011. Though the possession of the unit was to be offered on or before 09.11.2015 after completion of the project but the same was offered only on 21.03.2018 after receipt of occupation certificate on 10.01.2018 and ultimately leading to execution of conveyance deed of the same on 17.01.2019. So, limitation if any, for a cause of action would accrue to the complainant w.e.f. 21.03.2018. The present complaint seeking delay possession charges and other reliefs was filed on 14.11.2022 which is 4 years 7 months and 24 days from the date of cause of action. In the present matter the three year period of delay in filing of the case also after taking into account the exclusion period from 15.03.2020 to 28.02.2022 would fall on 16.02.2023. In view of the above, the Authority is of the view that the present complaint has been filed within a reasonable period of delay and is not barred by limitation.

15. In view of the above, the present complaint is filed within the limitation.

G. Findings on the reliefs sought by the complainants

- G.I Direct the respondent to make the payment of interest on account of delayed possession charges as per the Act of 2016.
G.II Direct the respondent to charge delay payment charges at equitable rate of interest.

16. 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."

17. Clause 10(a) of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

"10. POSSESSION**(a) Time of handing over the Possession**

*Subject to terms of this clause and subject to 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 36 (Thirty six) months from the date of start of construction**, subject to timely compliance of the provisions of the Buyer's Agreement by the Allottee. The Allottee(s) agrees and understands that the Company shall be entitled to a **grace period of 3 (three) months, for applying and obtaining the completion certificate/ occupation certificate in respect of the Unit and/or the Project.**"*

18. **Due date of possession and admissibility of grace period:** The buyer's agreement was executed between the complainants and the respondent on 20.05.2011 and as per clause 10(a) of the agreement the respondent was directed to handover the possession of the unit within a period of within 36 (Thirty six) months from the date of start of construction with a a grace period of 3 months for applying and obtaining the occupation certificate in respect of the complex. 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.

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 09.11.2015 including grace period of 90 days.

20. **Admissibility of delay possession charges at prescribed rate of interest:**

The 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.

21. The legislature in its wisdom in the subordinate legislation under the 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.

22. 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., 15.04.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

23. **Rate of interest to be paid by complainant/allottee for delay in making payments:** 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;"*

24. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
25. On consideration of the documents available on record and submissions made by the parties regarding contravention as per 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. By virtue of clause 10(a) of the buyer's agreement dated 20.05.2011, the possession of the said unit was to be delivered **within 36 (Thirty six) months from the date of start of construction** with a grace period of 3 months for applying and obtaining completion certificate /occupation certificate in respect of the group housing complex. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 09.11.2015. In the present case, the complainant was offered possession by the respondent on 21.03.2018 after obtaining occupation certificate dated 10.01.2018 from the competent authority. The authority is of the considered view that there is delay on the part of the respondent to offer physical

possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement.

26. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 10.01.2018. However, the respondent offered the possession of the unit in question to the complainant only on 21.03.2018, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, he should be given 2 months' time from the date of offer of possession. These 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 09.11.2015 till the expiry of 2 months from the date of offer of possession (21.03.2018) which comes out to be 21.05.2018.

27. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at prescribed rate of the interest @ 11.10% p.a. w.e.f. 09.11.2015 till 21.05.2018 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

G.III Direct the respondent to make the payment of HVAT.

G.IV Direct the respondent not to charge Holding charges.

28. The above-mentioned relief sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

29. In the above mentioned relief sought by the complainants the Authority observes that the financial liabilities between the allottee and the promoter come to an end after the execution of the conveyance deed accept for the statutory rights under the Act of 2016. The complainants could have asked for the claim before the conveyance deed got executed between the parties.
30. Moreover, the clause 13 of the conveyance deed dated 01.08.2019 is also relevant and reproduced hereunder for ready reference:

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

31. Therefore, after execution of the conveyance deed the complainant-allottee cannot seek any refund of charges other than statutory benefits if any pending. Once the conveyance deed is executed and accounts have been settled, no claims remains. So, no directions in this regard can be effectuated at this stage.

H. Directions of the Authority

32. 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 the interest at the prescribed rate i.e. 11.10 % per annum for every month of delay on the amount paid by the complainant from the due date of possession i.e., 09.11.2015 till 21.05.2018 i.e. expiry of 2 months from the date of offer of possession



(21.03.2018). The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.

- ii. Also, the amount of compensation already paid by the respondent towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.
- iii. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.

- 33. Complaint as well as applications, if any, stands disposed off accordingly.
- 34. File be consigned to registry.

(Ashok Sangwan)
Member

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.04.2025