

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

Complaint no. : 4513 of 2022
Order reserved on : 15.04.2025
Order pronounced on : 20.05.2025

Shri Vijay Kumar Gupta

R/o:- House No. 3007, Sector- 19D, Chandigarh- 160019

Complainant

Versus

M/s Emaar India Ltd.

(Formerly known as Emaar MGF Land Ltd.)

Address:- ECE House, 28, Kastubra Gandhi Marg, New
Delhi- 110001

Also at: - 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 Ishaan Dang

Advocate for the complainant

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	Emerald Floors Premier, Sector 65, Gurugram, Haryana
2.	Unit no.	EFP-17-0202 [page 20 of complaint]
3.	Provisional allotment letter dated	30.11.2009 [annexure R3, page 32 of reply]
4.	Date of execution of buyer's agreement	14.01.2010 [page 17 of complaint]
5.	Possession clause	<p>11. POSSESSION</p> <p>(a) Time of handing over the Possession</p> <p>Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 36 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 three months, for applying and obtaining the completion certificate/ occupation certificate in respect of the Unit and/or the Project.</p> <p style="text-align: right;">(Emphasis supplied)</p>
6.	Due date of possession	14.04.2013 [Note: 3 months grace period is included]
7.	Total consideration as per statement of account dated 26.06.2021 at page 71-72 of complaint	Rs.90,61,795/-
8.	Total amount paid by the complainant as per statement	Rs.91,23,598/-

	of account dated 26.06.2021 at page 71-72 of complaint	
9.	Occupation certificate	05.03.2019 [annexure R8, page 122-123 of reply]
10.	Offer of possession	06.11.2019 [annexure R9, page 124 of reply]
11	Unit handover letter dated	30.06.2021 [Page 133 of reply]
12	Conveyance deed executed on	12.07.2021 [page 138 of reply]

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

- i. That somewhere around in mid- 2009, the respondent advertised about its new project namely "Emerald Floor Premier" in Emerald Estate, Sector 65 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 group housing colony which inter-alia comprises of residential floor space, car parking space, recreational facilities, and landscaped gardens.
- ii. That believing the representations of the respondent and on the lookout for an adobe for himself and his family, on 24.09.2009, the complainant booked a unit in the said project by making a payment of Rs.5,00,000/- vide receipt no. 77144. After almost 4 months from the date of booking, finally, on 14.01.2010, the apartment buyer agreement was executed between the parties herein.
- iii. That, the complainant had already made a payment amounting to Rs.15,28,255/- from the date of booking till execution of agreement in accordance with the demands of the respondent. This conduct on the part of respondent in demanding and taking a deposit of more than 10% of the amount without first executing the agreement is a clear violation of Section



- 13 of the Act, 2016 and the respondent must be heavily penalized for the same.
- iv. That believing on the respondent representation the complainant kept on making payment as and when demanded by the respondent. Till date the complainant has paid a total sum of Rs.91,36,348/- towards the unit in question, as and when demanded, as against a total sale consideration of Rs.84,69,801/-. That as per clause 11(a) of the said buyer's agreement dated 14.01.2010, the respondent proposed to handover the possession of the unit in question within a period of 36 months from 14.01.2010 i.e., from the date of execution of buyers agreement along with grace period of 3 months, i.e., for applying and obtaining the completion certificate in respect of the unit by 14.04.2013. However, the respondent failed in handing over possession in accordance with the said agreement.
 - v. That as per clause 11(a) of the agreement, the due date of handing over possession comes out to be 14.04.2013. However, the respondent failed in handing over the same. The complainant approached the project location several times during the said period to see the stage of construction but the project was nowhere near completion. The complainant, subsequently approached the respondent representatives to know about the date of handing over of possession but to the utter shock of the complainant, the respondent refrain from replying to the same.
 - vi. That after a delay of around 6 years, on 06.11.2019, the respondent issued the letter of offer of possession upon which the complainant protested to the respondent that they issued the letter of possession after 6 years without any justified reasons and the delay has caused hardship on their lives, the wait for 6 years is not a short period.
 - vii. That after receiving offer of possession, the complainant approached the project location to take possession of the unit but the same was not in a



habitable position, upon which the respondent assured the complainant that finishing work in the unit shall be done within a period of 3 months. The complainant, left with no other option give time to the respondent to finish the pending construction work in the unit. Subsequently a lockdown due to outbreak of Covid-19 was imposed by Government of India due to which the complainant could not approach the respondent to take possession of the unit. However on 30.06.2021 i.e., after 2 years from the offer of possession, the unit was handed over to complainant by the respondent.

- viii. That the complainant after taking possession of the unit requested the respondent to make the payment of delay possession charges from due date of possession till actual handing of possession as per the Act of 2016, as the construction of the unit got delayed beyond the period as agreed in builder buyer agreement. But the respondent clearly refused to make the payment on account of delay possession charges as per Act of 2016.
- ix. That as per clause 13(a) of the buyer's agreement, upon delay payment by the allottee, the respondent can charge Rs.5/- per sq. ft. per month of the super area till the date of notice of possession, however, on account of delay in handing over possession by the respondent, he is liable to pay merely Rs.50/-per sq. ft. of the super area for the period of delay as per clause 14(a) of the said agreement. 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 had made representations and tall claims that the project will be completed on time. On the contrary, the respondent has failed in adhering to the representations made by him and retained the hard earned money paid by the complainant for so many years thereby

causing wrongful loss to the complainant and wrongful gain to the respondent.

- xi. 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.
- xii. 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. As per section 18 of the Act 2016, the promoter is liable to pay interest to the allottees of an apartment, building or project for a delay or failure in handing over of such possession as per the terms and agreement of the sale. Accordingly, the complainant is entitled to get interest on the paid amount along with interest at the rate as prescribed by the Authority per annum from due date of possession as per flat buyer agreement till the date of handing over of possession.
- xiii. That the present complaint has been filed in order to seek delay possession charges and other relief.

C. Relief sought by the complainant

4. The complainant has filed the present complaint for seeking following reliefs:
 - i. Direct the respondent to pay the delay possession charges as prescribed under the Act of 206 from the due date of possession till actual handing over of possession i.e. 30.06.2021.
 - ii. Direct the respondent not to charge the holding charges.
 - iii. Direct the respondent to charge delay payment 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 present complaint is not maintainable before this Authority under the provisions of the Act, 2016 and the Rules, 2017. The part of the project in question in which the unit is situated (Emerald Floors Premier at Emerald Estate Sector 65, Gurugram) is not an 'Ongoing Project" under Rule 2(1)(o) of the Rules. The project does not require registration and consequently has not been registered under the provisions of the Act. Construction of the unit/tower was completed and application for issuance of the occupation certificate was made to the competent authority on 29.06.2017, prior to notification of the Rules. Thereafter, the occupation certificate was issued on 05.03.2019 and possession was offered to the complainant on 06.11.2019. The complainant has taken possession of the unit on 30.06.2021 and conveyance deed has also been registered in favour of the complainant on 12.07.2021. This Authority, therefore, does not have the jurisdiction to entertain and decide the present complaint. The present complaint is liable to be dismissed on this ground alone. Even otherwise, the complaint is not maintainable in law and merits dismissal.
- ii. 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 the Authority and can only be adjudicated by the Civil Court. The present complaint deserves to be dismissed on this ground alone.
- iii. That the Complainant has 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 14.01.2010, as shall be evident from the submissions made in the following paras of the present reply.
 - iv. That the complaint is barred by limitation. The false and frivolous complaint is liable to be dismissed on this ground as well.
 - v. That the complainant is not an "Allottee" but investor who has booked the unit in question as a speculative investment in order to earn rental income /profit from its resale. The unit in question has been booked by the complainant as a speculative investment and not for the purpose of self-use as a residence. The complainant has not come before this Authority with clean hands and has 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 complainant had approached the respondent through his property dealer, and expressed an interest in booking a unit in the residential group housing colony developed by the respondent known as "Emerald Floors Premiere" situated in Emerald Estate, Sector 65, Gurgaon. Prior to make the booking, the complainant had conducted extensive and independent enquiries with regard to the project and it was only after the complainant was fully satisfied about all aspects of the project, that the complainant took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question. At the time of



- application, the building plans of the project had not yet been approved by the competent authority and this fact was clearly and transparently disclosed to the complainant at the time of booking itself and clearly mentioned in the application form.
- vii. That unit bearing number EFP-17-0202 was provisionally allotted to the complainant having tentative super area of 1975 sq. ft. application form, payment plan and provisional allotment letter dated 30.11.2009 issued in favour of the complainant. Buyer's agreement executed between the complainant, and the respondent dated 14.01.2010. The complainant had opted for a construction linked payment plan and had agreed and undertaken to make payment in accordance therewith. However, the complainant consciously defaulted in payments on several occasions. Consequently, the respondent was constrained to issue notices and reminders for payment to the complainant.
- viii. That the respondent completed construction of the tower/apartment allotted to the complainant and applied for the occupation certificate on 29.06.2017 and occupation certificate was thereafter issued in favour of the respondent vide memo bearing no. ZP-441/SD(DK)/2019/5982 dated 05.03.2019. 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. The possession of the unit was offered vide offer of possession dated 06.11.2019.



- ix. That after considerable delay, the complainant took possession of the unit on 30.06.2021, vide the unit handover letter after admitting and acknowledging that the complainant was fully satisfied with the unit in all respects and did not have any claim of any nature whatsoever against the respondent and that the obligations of the respondent stood fully discharged upon delivery of possession. Thereafter, the conveyance deed was registered in favour of the complainant on 12.07.2021. Thus, the respondent has duly fulfilled its obligations under the buyer's agreement.
- x. It is pertinent to mention that although not entitled to any compensation under the Buyer's agreement, the respondent has credited compensation amounting to Rs.7,48,660/- to the complainant. The respondent has also credited sums of Rs.12,527/-, Rs.6,610/- and Rs.38,412/-, in all Rs.57,549/- as benefit on account of anti-profiting. Furthermore, an EPR (Early Payment Rebate) of Rs.1,479/- was also credited. 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 principle 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.
- xi. That without admitting or acknowledging in any manner the truth or legality of the allegations levelled by the complainant and without prejudice to the contentions of the respondent, it is submitted that the project has got delayed on account of the following reasons which were/are beyond the power and control of the respondent and hence the respondent cannot be held responsible for the same: firstly, second staircase issue and secondly, defaults of contractor.

Second staircase issue:-



- xii. The building plans for the apartment/tower in question was approved by the competent authority under the then applicable National Building Code in terms of which buildings having height of 15 mtrs. or above but having area of less than 500 sq. mtrs., on each floor, were being approved by the competent authorities with a single staircase and construction was being carried out accordingly. Subsequently, the National Building Code (NBC) was revised in the year 2016 and in terms of the same, all high rise buildings (i.e., buildings having height of 15 mtrs. and above), irrespective of the area of each floor, are now required to have two stair cases.
- xiii. Furthermore, it was notified vide Gazette published on 15.03.2017 that the provisions of NBC 2016 supersede those of NBC 2005. The Fire Department is seeking to retrospectively apply the said provision and while processing the Fire NOC application has been insisting on two stair cases in all high rise buildings even in cases where the building plans stood approved with a provision for a single staircase and which have been constructed accordingly. The Fire Department has issued a provisional Fire NOC with the requirement that the second staircase would be constructed by the developer within one year from the date of issuance of the provisional Fire NOC.
- xiv. In view of the practical difficulties in constructing a second staircase in a building that already stands constructed according to duly approved plans, the respondent made several representations to various government authorities requesting that the requirement of a second staircase in such cases be dispensed with. The respondent had also pointed out that the allottees of the dwelling units were also eagerly awaiting possession of their units since long and requested that the Fire NOC be issued without any preconditions. The Fire department inspected the site of the project and sought alternate proposals from the respondent to meet the



requirement of second staircase in the buildings in question. The respondent accordingly submitted various proposals to the Fire Department.

Defaults of Contractor:

- xv. That a contract dated 01.11.2010 was executed between the respondent and M/s B L Kashyap and Sons (BLK/Contractor) in terms of which the contractor was to construct residential projects being developed by the respondent in the name and style of "Emerald Estate" and "Emerald Floors Premier", including civil, structure, finishing, MEP, external development, infrastructure, horticulture, EWS, clubhouses, swimming pools, convenience shopping etc. The start date of the project as determined by the parties was 26.07.2010 and the scheduled date of completion of the project was 25.07.2013.
- xvi. That the contractor was not able to meet the agreed timelines for construction of the project. The progress of work at the project site was extremely slow on account of various defaults on the part of the contractor, such as failure to deploy adequate manpower, shortage of materials etc. in this regard, the respondent made several requests to the contractor to expedite progress of the work at the project site. However, the contractor did not adhere to the said requests and the work at the site came to a standstill.
- xvii. That in the aforesaid circumstances, the respondent was constrained to issue notice of termination dated 16.01.2015, terminating the contract and calling upon the contractor to remove itself from the project site without removal/damage to the materials, equipment, tools, plant & machinery, and to hand over the contract documents. That the parties settled the disputes during the pendency of the aforesaid proceedings and the contractor assured the respondent that the project shall be completed



- within the decided timeline. This was considered to be in the interest of the Project as well as to mitigate losses, since considerable time would have been spent in re-tendering of the works. Further, the contractor had also undertaken to complete the Project within the agreed timelines i.e. within eighteen (18) months.
- xviii. That in spite of the aforementioned settlement between the respondent and the contractor, and with the contractor's assurances that the project will be finished within the agreed timeline, the contractor did not amend its ways, and persistently defaulted in meeting the agreed timelines for completion of the project.
- xix. That in the meanwhile, the National Building Code (NBC) was revised in the year 2016 and in terms of the same, all high rise buildings (i.e buildings having height of 15 mtrs and above), irrespective of the area of each floor, are now required to have two stair cases. Furthermore, it was notified vide Gazette published on 15.03.2017 that the provisions of NBC 2016 supersedes those of NBC 2005. The respondent had accordingly sent representations to various authorities identifying the problems in constructing a second staircase. Eventually, so as to not cause any further delay in the project and so as to avoid jeopardising the safety of the occupants of the buildings in question, the Respondent had taken a decision to go ahead and construct the second staircase. However, due to the impending BL Kashyap (contractor) issue of non-performance, the construction of the second staircase could not be started as well.
- xx. That in view of the above, the Respondent was constrained to terminate the contract with the Contractor vide termination notice dated 30.08.2018. After termination of the contract, the Respondent filed a petition against the Contractor before the Hon'ble Delhi High Court seeking interim protection against the Contractor so that the Contractor does not, inter

- alia, disturb the possession and work at the site. Similar petition was also filed by the Contractor against the respondent.
- xxi. That, without admitting or acknowledging the truth or legality of the allegations advanced by the complainant and without prejudice to the contentions of the respondent that the Act is not applicable to the project in question, 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 complainant for seeking interest or compensation cannot be called in to aid in derogation or in negation of the provisions of the buyer's agreement. As has been submitted hereinabove, compensation calculated in accordance with the buyer's agreement amounting to Rs.7,48,680/- has been paid to the complainant and duly accepted by the complainant.
- xxii. That after execution of the unit handover letter dated 30.06.2021, obtaining of possession of the unit in question, and registration of the conveyance deed in his favour, the complainant is not left with any claim against the respondent. The transaction between the complainant and the respondent stands concluded and no right or liability can be asserted by the respondent or the complainant against the other which is contrary to the conveyance deed and indemnity cum undertaking executed by the complainant. The instant complaint is a gross misuse of process of law.
- xxiii. That it is evident from the entire sequence of events that the respondent has duly fulfilled its contractual obligations under the buyer's agreement. Thus, the present complaint deserves to be dismissed at the very threshold. The allegations levelled by the complainant are totally baseless. There is no merit in the allegations raised by the complainant. Thus, it is

most respectfully submitted that the present application deserves to be dismissed at the very threshold.

7. The respondent has filed the written submissions on 24.04.2025 which is taken on record and has been considered by the authority while adjudicating upon the relief sought by the complainant.

E. Jurisdiction of the authority

8. 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.I Territorial jurisdiction

9. 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

10. 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.

11. 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 jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act.

12. One of the contentions of the respondent is that the 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. The respondent further submitted that the provisions of the Act are not retrospective in nature and the provisions of the Act cannot undo or modify the terms of buyer's agreement duly executed prior to coming into effect of the Act.
13. 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 *Hon'ble Bombay High Court in Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 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."*

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

15. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the buyer's agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the buyer's agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of the Act and are not unreasonable or exorbitant in nature.

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

16. The counsel for the respondent submitted that the complainant has filed the present complaint on 27.06.2022 after execution of conveyance deed on 12.07.2021. Therefore, the present complaint is barred by limitation. But the counsel for the complainant 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.
17. Though both the parties through their respective counsel advanced submissions with regard to the maintainability of the complaint 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 30.11.2009. Though the possession of the unit was to be offered on or before 14.04.2013 after completion of the project but the same was offered only on 06.11.2019 after receipt of occupation certificate on 05.03.2019 and ultimately leading to execution of conveyance deed of the same on 12.07.2021. So, limitation if any, for a cause of action would accrue to the complainant w.e.f. 06.11.2019. The present complaint seeking delay possession charges and other reliefs was filed on 27.06.2022 i.e., beyond three years w.e.f. 06.11.2022.
18. In view of the above, the present complaint is filed within the limitation.

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

19. 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."

20. 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.

G. Findings on the reliefs sought by the complainant

- G.I Direct the respondent to pay the delay possession charges as prescribed under the Act of 206 from the due date of possession till actual handing over of possession i.e. 30.06.2021.
- G.II Direct the respondent to charge delay payment at equitable rate of interest.

21. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

22. Clause 11(a) of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

"11. POSSESSION

(a) Time of handing over the Possession

*Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the Unit **within 36 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 **three months, for applying and obtaining the completion certificate/ occupation certificate** in respect of the Unit and/or the Project."*

23. **Due date of possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 36 months from the date of this agreement and it is further provided in agreement that promoter shall be entitled to a grace period of six months for applying and obtaining completion certificate/occupation certificate in respect of said floor. The buyer's agreement was executed on 14.01.2010 and the period of 36 months was expired on 14.01.2013. Further, the complainant/builder has submitted that a grace period of three months may be allowed to it for applying and obtaining the completion certificate/occupation certificate in respect of the unit and/or the project 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***

Lamd 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.

24. 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 14.04.2013 including grace period of six months.

25. **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.

26. 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.

27. 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., 20.05.2025 is

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

28. **Rate of interest to be paid by complainant/allottee for delay in making payments:** The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. 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;"*

29. 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.
30. 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 11(a) of the buyer's agreement executed between the parties on 14.01.2010, the possession of the said unit was to be delivered within a period of 36 months from the date of execution of this agreement and it is further provided in agreement that promoter shall be entitled to a grace period of six months for applying and obtaining completion

certificate/occupation certificate in respect of said floor. 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 14.04.2013. In the present case, the complainant was offered possession by the respondent on 06.11.2019 after obtaining occupation certificate dated 05.03.2019 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 annexed but not executed between the parties.

31. 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 05.03.2019. However, the respondent offered the possession of the unit in question to the complainant only on 06.11.2019, 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. 14.04.2013 till the expiry of 2 months from the date of offer of possession (06.11.2019) which comes out to be 06.01.2020.
32. 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. 14.04.2013 till 06.01.2020 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

G.III Direct the respondent not to charge the holding charges.

33. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed.
34. Moreover, the respondent is not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3899/2020 decided on 14.12.2020 (supra).

H. Directions of the Authority

35. 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., 14.04.2013 till 06.01.2020 i.e. expiry of 2 months from the date of offer of possession (06.11.2019). 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. The respondent is debarred from claiming holding charges from the complainant/allottee at any point of time even after being part of apartment buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal no. 3864-3899/2020 decided on 14.12.2020.
36. Complaint as well as applications, if any, stand disposed off accordingly.
37. File be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.05.2025

(Arun Kumar)
Chairman