

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

Complaint no. : 2128 of 2021
Date of decision 20.05.2025

Shri Khushnood Alam

R/o: - G-51/3B, Upper Ground Floor, Shaheen Bagh,
Jamia Nagar, Delhi- 110025.

Complainant

Versus

1. M/s Emaar MGF Land Ltd.

2. M/s Active Promoters Private Limited

Both having registered office at:- 306-308, Square One,
C-2, District Center, Saket New Delhi- 110017

Respondents

Coram:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

Appearance:

Shri Garv Malhotra (Advocate)
Shri J.K Dang (Advocate)

Complainant
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:

Sr. No.	Particulars	Details
1.	Name of the project	Emerald Plaza at "Emerald Hills", Sector- 65, Gurugram
2.	Unit no.	EPO-02-018, on 2 nd floor, [Page no. 21 of complaint]
3.	Provisional allotment in favour of original allottee i.e., Mrs. Monika Garg	01.07.2010 [Page no. 18 of complaint]
4.	Date of execution of buyer's agreement executed between the original allottee i.e., Mrs. Monika Garg and the respondent herein	05.08.2010 [Page no. 23 of complaint]
5	Date of agreement to sell executed between the original allottee i.e., Monika Garg and the complainant herein i.e., Khushnood Alam	21.08.2017 (Page No. 56 of the complaint)
6.	Nomination letter dated	04.12.2017 (Page No. 62 of the complaint)
7.	Possession clause	<p>16. POSSESSION</p> <p>(a). Time of Handing over the possession</p> <p>That the possession of the office space in the commercial complex shall be delivered and handed over to the allottee(s), within (30) months of the execution hereof, subject however to the allottees having strictly complied with all the terms and conditions of this agreement and not being default under any provisions of this agreement and all amounts due and payable by the allottee(s) under this agreement having been paid in time of the company.</p> <p>ii. The Allottee agrees and understands that the Company shall be entitled to a <u>grace period of 120 days over and above the period</u></p>

		<u>more particularly specified here-in-above in sub-clause (a)(i) of clause 16, for applying and obtaining necessary approvals in respect of the complex.</u> (Emphasis supplied) [page 31 of complaint]
8.	Due date of possession	05.06.2013 (Note:- due date of possession calculated from the date of buyer's agreement including 120 days grace period)
9.	Total consideration	Rs.42,57,796/- (As per statement of account dated 05.07.2021 at page no. 107 of the reply)
10.	Total amount paid by the complainant	Rs.42,71,029/- (As per statement of account dated 05.07.2021 at page no. 107 of the reply)
11.	Occupation certificate	08.01.2018 [annexure R1B, page 39 of reply]
12.	Offer of possession	27.01.2018 [annexure R12, page 136 of reply]
13.	Unit handover letter	18.10.2018 [annexure R13, page 145 of reply]
14.	Conveyance deed executed on	29.11.2018 [annexure R14, page 146 of reply]

B. Facts of the complaint

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

- i. That the respondent no.1 is the developer/builder and the respondent no. 2 is the landowner of the project respectively. That the respondents had launched a new commercial complex comprising of retail and commercial units under the name and style of "EMERALD PLAZA COMPLEX" in Sector 65, Gurugram, and Haryana admeasuring 3.963 acres & had published many advertisements for the project to attract the public at large. On

01.07.2010, a provisional allotment letter was issued for unit no. EPO-02-018 for the unit area admeasuring 58.27 sq. mts. (627.16 sq. ft.) in the project Emerald Plaza, at Emerald Hills, Sector 65, Gurugram.

- ii. That on 05.08.2010 an office space buyer agreement was signed and executed between Mrs. Monika Garg, Mrs. Kusum Lata Garg and Mr. Pramod Kumar Garg (hereinafter referred to as original allottees) and respondents for the above mentioned office space. The complainant had opted for construction linked plan of payment and as per the buyer's agreement. As per clause 16(a)(i) of the BBA, the possession of the unit was to be handed over within 30 months years, thereon from the date of execution of the flat buyers agreement, i.e., by 05.08.2010.
- iii. That on 21.08.2017 an agreement to sell was signed and executed between the first allottees and the complainant herein as the first party and the second party respectively, wherein the first party agreed to sell and the second party agreed to purchase the above said property and the ownership was transferred to Complainants from the original purchasers which was duly acknowledged and confirmed by the respondents.
- iv. That on 08.11.2017, the respondents endorsed the buyer's agreement in favour of the complainant thereby confirming the transfer. The date of assignment is 13.09.2017 and an Endorsement check list confirming the transfer was sent to the complainant by the respondents. Thereby the complainant stepped into the shoes of the original buyers. Apart from this the respondent also endorsed and assigned all the payment receipts in favour of complainant.
- v. That on 04.12.2017 a nomination letter confirming the transfer and nomination formalities was completed by the respondents in favour of the complainant, along with original copy of the buyer's agreement and payment receipts, duly endorsed in favor of the complainant.

- vi. That on 27.01.2018 an arbitrary, invalid and illegal offer of possession was issued from the respondent/builder and was called upon for settlement of final dues and to pay balance dues by 27.02.2018. That the respondents arbitrarily and unilaterally changed the final measurement/demarcations of the unit from 627.16 sq. ft. or 58.27 sq. mtrs. to 611.41 sq. ft. (approx) or 56.8 sq. mtrs. The respondent builder also arbitrarily and malafidely was charging advance monthly maintenance @ Rs.12/- per sq. ft. + GST @ 18% for 12 months, along with excessive and disproportionate stamp duty, delayed payment and holding charges. Upon the dispute over these issues, the possession was not handed over to the complainant and only after waiver of these arbitrary charges, possession was taken over. On 13.02.2018 the respondent sent a revised stamp duty request letter to reduce the stamp duty from Rs.2,71,740/- to Rs.2,55,920/-.
- vii. That from March 2018 till date various personal visits, phone calls and email conversations for repeated reminders for follow ups on the various issues and disputes regarding an arbitrary, invalid and illegal offer of possession along with excessive and disproportionate stamp duty, delayed payment and holding charges. The respondent builder offered various incentives by giving free maintenance for a period of one year and reduction in maintenance charges to encourage the complainant to take over the possession. That the respondents vide their email dated 16.07.2018 incentivized to credit a sum of Rs. 1 Lakh. Thereafter on 31.07.2018, the respondent builder requested for 4-5 more days, on 01.08.2018, the respondent builder emailed stating that the conveyance deed registration was in process and asked for another 8-10 days, lastly, on 07.08.2018, the respondent builder mailed apologizing for inconveniences and requested for more time for crediting the incentive amount.

- viii. That vide email dated 24.05.2018 the respondent issued an arbitrary demand for payment of Rs.69,261/-, but the same had already been paid for on 04.04.2018. On 07.05.2018 an indemnity cum undertaking agreement was made to be signed by the complainant from the respondents, where the complainant was made to sign on the dotted lines to give no objection on the increase/decrease in the area of the said unit. Moreover, the builder company, its employees, nominees, agents unilaterally and arbitrarily on its own indemnified and held itself harmless against all claims and demands whatsoever resulting there from. Furthermore, the issue of HVAT was left open since the matter was sub-judice, subject to the outcome of the pending adjudication.
- ix. That on 15.10.2018 a handover advice letter to take over the physical possession of the said unit was sent to the complainant and the complainant took over the physical possession on 18.10.2018 for which the respondent issued a unit handover letter on 18.10.2018. Further, on 29.11.2018 the deed of conveyance was signed and executed between the respondents and the complainant. Moreover, in the present project the respondents have charged the complainant on super built up area whereas as per the new act the basic sale price is liable to be paid on the carpet area only. The complainant has time and again asked for the breakup of the super area but has not been provided the same till date. This is a clear and blatant violation of the provisions, rules and object of the Act.
- x. That after taking over the possession the complainant realized that the neighbouring unit namely EPO-02-017 has no provision of wet point for that unit and thus the owner of unit EPO-02-017 has made encroachment upon the unit of the complainant for carrying on the waste water pipe. Furthermore, the said pipe is releasing waste material into the shaft of the balcony of the complainant instead of being connected to the proper outlet

for the drainage, thereby prone to causing seepage and harming the aesthetic value and peaceful use of the unit of the complainant. The complainant raised this issue with the respondents and their maintenance agency and they outrightly refused to remove encroachment from the unit and provide relief to the complainant. That the present defect comes within the ambit of structural defect and the respondents are liable to make good the same.

- xi. That the respondent/builder has taken the undue benefit of all input tax credit after the GST regime and not passed the same to the various end customers and the complainants in this case. This amounts to restrictive and unfair trade practice and the respondent should be adequately penalized and the complainants appropriately reimbursed for the same.
- xii. That the complainant have complied with all the terms and conditions of the BBA but the respondents have failed to meet up with their part of the contractual obligations and thus are liable for payment of interest and penalty for delayed possession from the due date of possession till actual taking over of physical possession. But till date no amount has been paid back to the complainant and the respondents have been enjoying the hard earned money of the complainant for more than seven years approximately.

C. Relief sought by the complainant

- 4. The complainant has filed the present complaint for seeking following reliefs:
 - i. Direct the respondent to pay delayed possession charges for every month of delay at the prescribed rate of interest from the due date of possession till actual taking over of physical possession.
 - ii. Direct the respondent to remove the encroachment upon the unit of the complainant occurring from the neighbour's unit for carrying out waste

water pipe from the balcony of the complainants unit and be compensated for the damages and repair works of the same.

- iii. Direct the respondent to charge on carpet area as described in the RERA Act and not on the super area as described in the BBA and conveyance deed and provide the breakup and details of the super area.
- iv. Direct the respondent to reimburse the tax benefit (GST) and litigation cost of Rs.1,00,000/- to the complainant as he was considered to file the same because of the callous and indifferent attitude of the respondent and as this Authority may deem fit.

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 in law or on facts. The present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint are beyond the purview of this Authority and can only be adjudicated by the Adjudicating Officer/Civil Court. The present complaint deserves to be dismissed on this ground alone.
 - ii. That the complainant is not an "Allottee" but an 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.



- iii. That the original allottees (Mrs. Monika Garg, Mrs. Kusum Lata Garg and Mr. Pramod Kumar Garg) had booked the unit in question, bearing number EPO-02-018, situated in the project developed by respondent no. 1, known as "Emerald Plaza", Sector 65, Gurugram and Haryana. That the original allottees prior to approaching respondent no. 1, had conducted extensive and independent enquiries regarding the project and it was only after the original allottees were fully satisfied with regard to all aspects of the project, including but not limited to the capacity of respondent no. 1 to undertake development of the same, that the original allottees took an independent and informed decision to purchase the unit, un-influenced in any manner by respondent no. 1. Buyer's agreement dated 05.08.2010 was executed between the parties. The original allottees consciously and wilfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to respondent no. 1 that the original allottees shall remit every instalment on time as per the payment schedule. Respondent no. 1 had no reason to suspect bonafide of the original allottees. Thereafter the complainant approached the original allottees for purchasing their rights and title in the unit in question. The original allottees acceded to the request of the complainant and agreed to transfer and convey their rights, entitlement and title in the unit in question to the complainant for a valuable sale consideration of Rs.35,98,542/-.
- iv. That the complainant and original allottees on executing the aforesaid agreement to sell had approached respondent no. 1 requesting it to endorse the provisional allotment of the unit in question in the name of the complainant. Nomination letter dated 04.12.2017 issued by respondent no. 1 to the complainant. The complainant had further

executed an affidavit dated 03.11.2017 and an indemnity cum undertaking dated 03.11.2017, whereby the complainant had consciously and voluntarily declared and affirmed that he would be bound by all the terms and conditions of the provisional allotment in favour of the original allottees as well as the terms and conditions incorporated in the buyer's agreement.

- v. That the complainant too had defaulted in timely remittance of installments to respondent no. 1 and the same is duly reflected in the statement of account dated 05.07.2021 correctly maintained by respondent no. 1 in due course of its business. Furthermore, the complainant had intentionally refrained from obtaining possession of the unit in question despite receipt of letter offer of possession dated 27.01.2018. The complainant, therefore, is not entitled to any compensation/interest in accordance with clause 18 of the buyer's agreement. That the original allottees/ complainant consciously and maliciously chose to ignore the payment request letters and reminders issued by respondent no. 1 and flouted in making timely payments of the instalments which was an essential, crucial and an indispensable requirement under the buyer's agreement.
- vi. That the rights and obligations of the complainant as well as respondent are completely and entirely determined by the covenants incorporated in the buyer's agreement. As per clause 16 of the buyer's agreement dated 05.08.2010 the time period for delivery of possession was 30 months along with grace period of 120 days from the date of execution of the buyer's agreement subject to the allottee(s) having strictly complied with all terms and conditions of the buyer's agreement and not being in default of any provision of the buyer's agreement including remittance of all amounts due and payable by the allottee(s) under the agreement as



per the schedule of payment incorporated in the buyer's agreement. It was categorically provided in clause 16 that in case of any default/delay by the allottees in payment as per schedule of payment incorporated in the buyer's agreement, the date of handing over of possession shall be extended accordingly, solely on respondent no. 1's discretion till the payment of all outstanding amounts to the satisfaction of respondent no. 1. Furthermore, it has been categorically provided in the agreement that the time period for delivery of project shall also stand extended on occurrence of facts and circumstances which are beyond the power and control of respondent no. 1. Since, the complainant as well as original allottees have defaulted in timely remittance of payments as per schedule of payment, the date of delivery of possession is not liable to be determined in the manner sought to be done in the present case by the complainant.

- vii. That by purchasing the unit in question after 4 years from the alleged due date of delivery of possession and payment of amounts to respondent no. 1 thereafter, the complainant has waived the timeline for delivery of possession as per the buyer's agreement. Furthermore, the time line for delivery of possession are contingent upon various factors such as time taken by the statutory/competent authority in according approvals, permissions, sanctions, including but not limited to the issuance of the occupation certificate/competition certificate, timely payment of instalments by the allottees and other factors which are beyond the power and control of respondent/promoter. Therefore, cumulatively considering all these aspects of the present matter, no relief deserves to be granted to the complainant.
- viii. That without prejudice to the contentions of the respondents, it is submitted that the present complaint is barred by limitation. The

complainant has alleged that the possession of the unit was to be given not later than August 2013 and therefore cause of action, if any, accrued in favour of the complainant in August 2013. Thus, the complaint seeking interest as a form of indemnification for the alleged delay is barred by limitation.

- ix. That it needs to be highlighted that respondent no. 1 had applied to the statutory authority for grant of occupation certificate in respect of the tower in which the unit in question is located on 26.05.2017 and the same was granted on 08.01.2018. It is reiterated that once an application for issuance of occupation certificate is submitted before the concerned competent authority, respondent no. 1 ceases to have any control over the same. The grant of occupation certificate is the prerogative of the concerned statutory authority and respondent no. 1 does not exercise any control over the matter. Therefore, the time period utilised by the concerned statutory authority for granting the occupation certificate needs to be necessarily excluded from computation of the time period utilised in the implementation of the project in terms of the buyer's agreement. As far as respondent no. 1 is concerned, it has diligently and sincerely pursued the development and completion of the project in question.
- x. That it is pertinent to take into reckoning that the complainant was offered possession of the unit in question through the letter of offer of possession dated 27.01.2018. The complainant was called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit in question to him. However, the complainant consciously refrained from obtaining possession of the unit in question.

- xi. That the complainant did not have adequate funds to remit the balance payments requisite for obtaining possession in terms of the buyer's agreement at the relevant time and consequently the complainant had refrained from obtaining possession of the unit in question. The complainant has preferred the instant complaint on wholly extraneous and inherently fallacious grounds. The present complaint is nothing but a gross abuse of process of law.
- xii. That after needlessly delaying the matter, the complainant approached respondent requesting it to deliver the possession of the unit in question. A unit handover letter dated 18.10.2018 was executed by the complainant, specifically and expressly agreeing that the liabilities and obligations of the respondent no. 1 as enumerated in the allotment letter or the buyer's agreement stand satisfied. The complainant has intentionally distorted the real and true facts in order to generate an impression that respondent no. 1 has reneged from its commitments. No cause of action has arisen or subsists in favour of the complainant to institute or prosecute the instant complaint.
- xiii. That after execution of the unit handover letter dated 18.10.2018 and obtaining of possession of the unit in question, the complainant is left with no right, entitlement or claim against the respondents. The complainant has further executed a conveyance deed dated 29.11.2018 in respect of the unit in question. The transaction between the complainant and the respondent's stands concluded and no right or liability can be asserted by the respondents or the complainant 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 it needs to be highlighted that respondent has paid an amount of Rs.13,227/- as benefit on account of Anti-Profiting and Rs.2,805/- on account of early payment rebate (EPR). Furthermore, an amount of Rs.1,00,000/- has been credited by respondent no. 1 to the account of the complainant on account of on time payment rebate (OTPR). Without prejudice to the rights of the respondents, delayed Interest if any has to be calculated only on the amounts deposited by the complainant towards the price of the unit in question and not on any amount credited by respondent no. 1, or any payment made by the original allottees towards the purchase price of the unit in question or delayed payment charges (DPC) or any taxes/statutory payments etc.
- xv. That in addition thereto, it is respectfully submitted that the complainant has executed an indemnity cum undertaking dated 07.05.2018 whereby the complainant had declared and acknowledged that he has no ownership right, title or interest in any other part of the project except in the unit area of the unit in question. Moreover, the complainant has admitted his obligation to discharge his HVAT liability thereunder. The complainant has preferred the instant complaint in complete contravention of his earlier representations and documents executed by him. The complainant has filed the instant false and frivolous complaint in order to mount undue pressure upon the respondents in order to make them succumb to his unjust and illegitimate demands. The allegations levelled by the complainant are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

8. The 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. Objections raised by the respondent.

F.1 Objection regarding maintainability of complaint on account of complainant being investor.

12. The respondent took a stand that the complainant is investor and not consumer and therefore, he is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the allotment letter, it is revealed that the complainant is buyer's, and has paid a total price of Rs.42,71,029/- to the promoter towards purchase of a unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) 'allottee' in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

13. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred to in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of the promoter that

the allottee being investor are not entitled to protection of this Act also stands rejected.

F.II Whether the complaint is barred by limitation or not?

14. So far as the issue of limitation is concerned the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Act of 2016 .However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural Justice. It is a universally accepted maxim and the law assists those who are vigilant, not those who sleep over their rights .Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority is of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances. However this shall not apply to the provisions of section 14 where specific period has already been defined.
15. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in MA NO. 21 of 2022 of Suo Moto Writ Petition Civil No. 3 of 2020 have held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for purpose of limitation as maybe prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
16. In the present matter, the cause of action arose on 27.01.2018 when the offer of possession was made by the respondent to the complainant. The complainant has filed the present complaint on 20.04.2021 which is 3 years 2 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 02.04.2023. 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.

F.III Where the subsequent allottee has stepped into the shoes of the original allottee after coming into force of the Act:

17. There may be a situation where an allottee transferred his unit in favour of a subsequent allottee after the Act came into force and where the project has been registered under the Act by the respondent. It was argued by the promoter that in cases where the subsequent allottee came into picture after the registration of the project under the provisions of the Act with the authority, then the date of completion of the project and handing over the possession shall be the date declared by the promoter under section 4(2)(I)(C) of the Act. The counsel of the respondent further argued that the while purchasing the unit, it is presumed that the allottee very well knew that the project would be completed by that specific declared date, therefore, the delayed possession charges shall not be allowed.
18. The authority is of the view that the time period for handing over the possession as committed by the builder as per the relevant clause of builder buyer's agreement and the commitment of the promoter regarding handing over of possession of the unit is taken accordingly. The new timeline indicated in respect of ongoing project by the promoter while making an application for registration of the project does not change the commitment of the promoter to hand over the possession by the due date as per the builder buyer's agreement and the promoter is liable for the consequences and obligations arising out of failure in handing over possession by the due date as committed by him in the builder buyer's agreement and is liable for the delayed possession charges as provided in proviso to section 18(1) of the Act. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. The same issue has been dealt by Hon'ble Bombay High Court in case titled as *Neelkamal Realtors Suburban Pvt. Ltd.* (supra) wherein it

was held that the RERA Act does not contemplate rewriting of contract between the allottee and the promoter. The relevant para of the judgement is reproduced below:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter..."

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

G. Findings on the relief sought by the complainant

G.I Direct the respondent to pay delayed possession charges for every month of delay at the prescribed rate of interest from the due date of possession till actual taking over of physical possession.

19. In the present complaint, the original allottee was allotted a unit vide allotment letter dated 01.07.2010 and thereafter the original allottee sold the subject unit to the subsequent allottee being the complainant herein on 21.08.2017, and the same was acknowledged by the respondent vide nomination letter dated 04.12.2017. Therefore, the complainant stepped into the shoes of original allottee on 04.12.2017.

20. 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."*

21. As per clause 16 of the office space buyer's agreement provides the time period of handing over possession and the same is reproduced below:

Clause 16

(i) Time of handing over of possession

*That the possession of the office space in the commercial complex shall be delivered and handed over to the allottee(s), **within (30) months of the execution hereof**, subject however to the allottee(s) having strictly complied with all the terms and conditions of this agreement and not being default under any provisions of this agreement and all amounts due and payable by the allottee(s) under this agreement having been paid in time of the company. The company shall give notice to the Allottee(s), offering in writing, to the Allottee to take possession of the Office Space for his occupation and use ("Notice for Possession")*

- ii. The Allottee agrees and understands that the Company shall be entitled to a grace period of 120 days over and above the period more particularly specified here-in-above in sub-clause (a)(i) of clause 16, for applying and obtaining necessary approvals in respect of the complex.***

22. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the unit within a period of 30 months from the date of this agreement. The buyer's agreement was executed on 05.08.2010. Further, it was provided in the buyer's agreement that company shall be entitled to a grace period of 120 days, for applying and obtaining the completion certificate/occupation certificate in respect of the unit and/or the project.

23. The Authority put reliance on the judgement of 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.

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 necessary approvals in respect of the complex. Thus the due date of handing over of possession comes out to be 05.06.2013.
25. **Admissibility of delay possession charges at prescribed rate of interest:**
The complainant is seeking delay possession charges at the prescribed rate of interest on the amount already paid by him. 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.
26. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
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. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottees by the

promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default.

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 regarding contravention of provisions of the Act, the Authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 16(a) of the agreement, the possession of the subject apartment was to be delivered within 30 months from the date of execution of space buyer's agreement and it is further provided in agreement that promoter shall be entitled to a grace period of 120 days for applying and obtaining necessary approvals in respect of the 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 05.06.2013. In the present case, the complainant was offered possession by the respondent on 27.01.2018 after obtaining occupation certificate dated 08.01.2018 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 executed between the parties.
31. In the present complaint, the original allottee was allotted a unit vide allotment letter dated 01.07.2010 and thereafter the original allottee sold the subject unit to the subsequent allottee being the complainant herein on 21.08.2017, and the same was acknowledged by the respondent vide nomination letter dated 04.12.2017. Therefore, the complainants stepped into

the shoes of original allottee on 04.12.2017 i.e., after the due date. It simply means that the complainant was well aware about the fact that the construction of the tower where the subject unit is situated has not been completed and occupation certificate qua that part of project is yet to be obtained. However, he still chosen to proceed with execution of the agreement voluntarily which means that the complainant had accepted the factum of the delay. Moreover, they have not suffered any delay as the subsequent allottee/complainant herein came into picture only on 04.12.2017 when the subject unit was endorsed in his favour. Hence, in such an eventuality and in the interest of natural justice, delay possession charges can only be granted to the complainant from the date of nomination dated 04.12.2017 i.e., date on which the complainant stepped into the shoes of the original allottee. The Authority is of considered view that there is delay on the part of the respondents/promoter to offer of possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 05.08.2010. Accordingly, it is the failure of the respondent /promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.

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 rate of the prescribed interest @11.10% p.a. w.e.f. from the date of nomination letter i.e., 04.12.2017 till 27.03.2018 the date of offer of possession (27.01.2018) plus two months or till the date of actual handing over of possession (18.10.2018) whichever is earlier as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

G.II Direct the respondent to remove the encroachment upon the unit of the complainant occurring from the neighbour's unit for carrying out

waste water pipe from the balcony of the complainants unit and be compensated for the damages and repair works of the same.

G.III Direct the respondent to charge on carpet area as described in the RERA Act and not on the super area as described in the BBA and conveyance deed and provide the breakup and details of the super area.

G.IV Direct the respondent to reimburse the tax benefit (GST) and litigation cost of Rs.1,00,000/- to the complainant as he was considered to file the same because of the callous and indifferent attitude of the respondent and as this Authority may deem fit.

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

34. In the above mentioned relief sought by the complainant 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 complainant could has asked for the claim before the conveyance deed got executed between the parties.

35. Moreover, the clause 10 of the conveyance deed dated 29.11.2018 is also relevant and reproduced hereunder for ready reference:

10. That the actual, physical, vacant possession of the said unit has been handed over to the Vendee and the Vendee hereby confirms taking over possession of the said unit from the Vendors after satisfying himself/herself that the construction as also the various installations like electrification work, 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 unit, any item of work, material, quality of work, installation, etc., therein.

36. 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

37. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:

- i. The respondent/promoter is directed to pay 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 date of nomination letter i.e., 04.12.2017 till 27.03.2018 the date of offer of possession (27.01.2018) plus two months or till the date of actual handing over of possession (18.10.2018) whichever is earlier as per provisions of section 18(1) of the Act read with rule 15 of the Rules. 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 complainants which is not the part of the buyer's agreement.

38. Complaint as well as applications, if any, stand disposed off accordingly.

39. File be consigned to registry.

(Ashok Sangwan)
Member

V. (Vijay Kumar Goyal)
Member

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.05.2025