

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

Complaint no.: 4238 of 2021
Date of complaint: 08.11.2021
Date of order: 29.07.2025

1.Mr. Rahul Bambi

2.Mrs. Parul Bambi

Both R/o: - 329, SFS Flats, Phase-4, Ashok
Vihar, New Delhi-110052

Complainants

Versus

1.Emaar MGF Land Ltd.

Regd. Office: ECE HOUSE, 28, Kasturba Gandhi
Marg, New Delhi-1100001

2.Dayanand

R/o: Village Badshapur, Gurugram
Also at 306-308, Square One C2, District Centre
Saket, New Delhi-110017

Respondents

CORAM:

Shri Arun Kumar
Shri Ashok Sangwan

Chairman
Member

APPEARANCE:

Shri Gaurav Rawat (Advocate)
Shri Dhruv Rohtagi (Advocate)
None

Complainants
Respondent no.1
Respondent no.2

ORDER

1. The present complaint has been filed by the complainant/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the

provision of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details.

2. The particulars of unit details, 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	"Premier Terraces at Palm Drive", Sector 66, Gurugram, Haryana
2.	Nature of project	Group housing colony
3.	DTCP License no.	i. 208 of 2007 dated 27.09.2007 valid up to 26.09.2019 ii. 93 of 2008 dated 12.05.2008 valid up to 11.05.2020
4.	Unit no.	H-704, Tower-H, 7 th floor (page no. 59 of the complaint)
5.	Unit area	1950 sq. ft. (Super Area) (page no. 59 of the complaint)
6.	Allotment letter in favour of original allottee i.e., Dayanand	25.09.2009 (page no. 53 of the complaint)
7.	Date of execution of buyer's agreement letter in favor of original allottee i.e., Dayanand	09.01.2010 (page no. 57 of the complaint)
	Total sale consideration agreed between respondent and original allottee i.e., Dayanand	Rs.1/- (as per buyer's agreement page 57 of complaint)
8.	Agreement to transfer and assign rights executed between the original allottee i.e., Dayanand and the first subsequent allottee i.e., Manoj Choudhary and Aman Choudhary For consideration of Rs.93,16,890/-	25.05.2010 (page no. 70-72 of the reply)

9.	Date of agreement to sell executed between first subsequent allottee i.e., Manoj Choudhary and the complainant herein i.e., Rahul Bambi and Parul Bambi For consideration of Rs.91,21,890/-	29.12.2010 (As per page no. 87-88 of the complaint and 82 of reply)
10.	Date of tripartite agreement b/w HDFC, complainant and respondent	22.02.2011 (As per page no. 145 of the reply)
11.	Nomination letter	05.04.2011 (As per page no. 86 of the complaint)
12.	Possession clause as per the buyer's agreement executed with the original allottee 09.01.2010	11. POSSESSION (a) Time of handing over the Possession <i>Subject to terms of this clause and subject to the Allottee 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 developer, the developer proposes to hand over the possession of the unit by December 2011. The Allottee agrees and understands that the developer shall be entitled to a grace period of ninety (90) days, for applying and obtaining the completion certificate/occupation certificate in respect of the unit and/or the Complex.</i> (Emphasis supplied) (As on page no. 66 of the complaint)
13.	Due date of possession	30.03.2012 (As mentioned in the buyer's agreement December 2011 plus 90 days grace period)
14.	Total sales consideration	Rs.1/- (page 57 of complaint)
15.	Amount paid by the complainants	Rs.12,78,248/- (as per SoA dated 06.06.2018 page 127 of complaint)
16.	Occupation certificate	25.01.2018 (As per page no. 99 of the reply)
17.	Offer of possession	22.03.2018 (As per page no. 92 of the complaint)
18.	Indemnity cum undertaking	17.04.2018

	by complainants	(As per page no. 137 of the reply)
19.	Unit handover letter	23.06.2018 (As per page no. 108 of the reply)
20.	Conveyance deed	14.02.2019 (As per page no. 100 of the complaint)

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That in 2007, the respondent issued an advertisement announcing a Group Housing Colony Project called "The Premier Terraces" Sector - 66, Gurugram on the 27299 acres of land, under the license no. no. 288 of 2007 dated 29.07.2007, 93 of 2008 dated 12.05.2008, 50 of 2010 dated 24.06.2010, issued by DTCP, Haryana, Chandigarh and thereby invited applications from prospective buyers for the purchase of unit in the said project. Respondent confirmed that the projects had got building plan approval from the Authority.
- II. That the complainants while searching for a flat/accommodation was lured by such advertisements and calls from the brokers of the respondent for buying a house in their project namely Premier Terraces. The original allottee namely, Mr. Dayanand(land owner/collaborator), booked a unit in the project by paying an booking amount towards the booking of the said unit bearing no. unit H-F-07-704, 7th floor, tower H having super area measuring 1950 sq. ft. to the respondent dated 25.09.2009 and the same was acknowledged by the respondent.
- III. That the respondent sent an allotment letter dated 25.09.2009 and confirming the booking of the unit to the original allottee (land owner/collaborator), providing the details of the project, confirming the booking of the unit dated 25.09.2009, allotting a unit no. unit H-F-07-704, 7th floor, Tower h admeasuring 1950 sq. ft (super built up area) in the aforesaid project of the developer for a total sale consideration of the unit

i.e. Rs.1,03,28,188/- which includes basic price, plus EDC and IDC, two car parking charges and other specifications of the allotted unit and providing the time frame within which the next instalment was to be paid.

- IV. That the original allottees (land owner/collaborator), subsequently transferred / endorsed the property in favour of Mr. Manoj Choudhary and Mrs. Aman Choudhary and thereafter second allottees subsequently transfer the same in the favour of complainants vide agreement to sell dated 29.12.2010. The second allottee executed an "agreement to sell" in favour of the complainants for an appropriate consideration. The balance amount for obtaining the property which was still under construction was paid by the complainants according to the demands raised by the respondent. The respondent promoter, vide their nomination letter recorded their consent to the transfer by stating:
- V. "Accordingly, now the captioned property stands in the name of Mr. Rahul Bambi and Mrs. Parul Bambi". A buyer's agreement was executed between the original allottee and respondent on 09.01.2010. Same was endorsed in favour of the complainant vide endorsement dated 05.04.2011.
- VI. Further, the complainants having dream of its own residential unit in NCR signed the agreement in the hope that the unit will be delivered on or before August, 2013. The complainants were also handed over one detailed payment plan which was construction linked plan.
- VII. As per clause 11(a) of the buyer's agreement the respondent had to deliver the possession of the unit on or before December,2011. Therefore, the due date of possession comes out to be December,2011.
- VIII. As per the demands raised by the respondent, based on the payment plan, the complainants to buy the captioned unit already paid a total sum of Rs. 1,03,28,188/- towards the said unit against total sale consideration of Rs.1,03,28,188/-.

- IX. That the payment plan was designed in such a way to extract maximum payment from the buyers viz a viz or done/completed. the complainants approached the respondent and asked about the status of construction and also raised objections towards non-completion of the project. Such arbitrary and illegal practices have been prevalent amongst builders before the advent of RERA, wherein the payment/demands/ etc. have not been transparent and demands were being raised without sufficient justifications and maximum payment was extracted just raising structure leaving all amenities/finishing/facilities/common area/road and other things promised in the brochure, which counts to almost 50% of the total project work.
- X. That during the period the complainants went to the office of respondent several times and requested them to allow them to visit the site but it was never allow saying that they do not permit any buyer to visit the site during construction period, once complainants visited the site but was not allowed to enter the site and even there was no proper approached road. The complainants even after paying amounts still received nothing in return but only loss of the time and money invested by them.
- XI. That the complainants contacted the respondent on several occasions and were regularly in touch with the respondent. The respondent was never able to give any satisfactory response to the complainants regarding the status of the construction and were never definite about the delivery of the possession. The complainants kept pursuing the matter with the representatives of the respondent by visiting their office regularly as well as raising the matter to when will they deliver the project and why construction is going on at such a slow pace, but to no avail. some or the other reason was being given in terms of shortage of labour etc.

- XII. That the complainants after many requests and emails, received the offer of possession on 22.03.2018. Along with the said letter of offer of possession respondent raised several illegal demands on account of the following which are actually not payable as per the builder buyer agreement: Advance Monthly Maintenance for 12 months of Rs.71,862/, Electric Meter Charges of Rs.12,62/-, Club Membership Charges of Rs.2,06,500/-, Gas Connection Charges of Rs.20,013/-, Sewerage Connection Charges of Rs.1,767/- and Electrification Charges of Rs.83,950/-.
- XIII. That offering possession by the respondent on payment of charges which the flat buyer is not contractually bound to pay, cannot be considered to be a valid offer of possession. These charges were never payable by the complainants as per the agreement, by the complainant and hence the offer of possession.
- XIV. That the respondent is asking for 12 months of advance maintenance charges amounting to Rs.71,862/- from the complainants which is absolutely illegal and against the laws of the land. The responsibility for upkeep and maintenance of these areas is collective. The contributions made for the same are in the form of a stipulated fee to manage expenses for the management and repair of any damage to the same. These are paid monthly once the expenses have been incurred and billed to the owner of the unit and therefore demanding an amount of Rs.75,600/- as a deposit of annual common area maintenance charges along with the final payment is unjustified and illegal and therefore needs to be withdrawn as the same is not payable by the complainants.
- XV. That the respondent asking for electric meter charges of Rs.12,626/- and electrification charges of Rs.83,950/- from the complainants is absolutely illegal as the cost of the electric meter in the market is not more than Rs. 2,500/-. Hence asking for such a huge amount, when the same is not a part

of the builder buyer agreement is unjustified and illegal and therefore needs to be withdrawn immediately. So are the other demands required to be withdrawn, as per details provided above and those which are not a part of the BBA.

- XVI. That complainants requested the respondent to show/inspect the unit before complainants pay any further amount and requesting to provide the car parking space no but respondent failed to reply. The respondent asked the complainants to sign the indemnity bond as perquisite condition for handing over of the possession. Complainants raised objection to above said pre-requisite condition of the respondent as no delay possession charges was paid to the complainants but respondent instead of paying the delay possession charges clearly refuse to handover to possession if the complainants do not sign the aforesaid indemnity bond. Further, the complainants left with no option instead of signing the same.
- XVII. That the complainants have never delayed in making any payment and has always made the payment rather much before the construction linked plan attached to the BBA. The allottee has approached the company with a request for payment of compensation, despite not making payments on time and on the assurance that he shall make the payment of the delay payment charges as mentioned above along with all other dues to the company.
- XVIII. That the complainants after many follow ups and reminders, and after clearing all the dues and fulfilling all one-sided demands and formalities as and when demanded by the respondent got the physical handover of the unit. Further, respondent issued handover advice letter. Thereafter, respondent issued handover letter on account of handing over the physical possession of the unit.

XIX. That the complainants after many follow ups and reminders, and after clearing all the dues and fulfilling all one-sided demands and formalities as and when demanded by the respondent got the conveyance deed executed dated 14.02.2019. While this conveyance deed makes no provision for compensating the complainants for the huge delay in handing over the flat and project. The complainants were not given any opportunity to negotiate the terms of the said sale deed.

XX. That no negotiations were permitted in relation to the buyer's agreement dated 09.01.2010. The complainant was told that the sale deed will encompass all the relevant issues at hand. This agreement and various clauses therein amount to an unconscionable agreement that is an agreement containing terms that are so extremely unjust, or overwhelmingly one-sided in favour of the party who has the superior bargaining power, that they are contrary to good conscience.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):

- I. Direct the respondent to pay delayed possession charges at the prescribed rate of interest from the due date of possession till actual handing over of possession.
- II. Direct respondent to pay the balance amount due to the complainants from the respondent on account of the interest as per the guidelines laid in the Act, 2016.
- III. To set aside the one-sided indemnity bond get signed by the respondent from the complainant under influence.

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

D. Reply by the respondent no.1.

6. The respondent no.1 has contested the complaint on the following grounds: -

- i. That the complainants have already obtained possession of the unit in question and has, further, executed a conveyance deed regarding the unit in

question. The transaction between the complainants and the respondent stands satisfied. The reliefs sought in the present complaint is false and frivolous and the same is barred by estoppel.

- ii. That the present complaint is also 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. Therefore, the present complaint deserves to be dismissed on this ground alone.
- iii. That in addition to that, the respondent has preferred an SLP against an allottee of the similar project challenging the similar issues raised in the common impugned order passed in the writs filed by the respondent challenging the legalities and vires of the act and its existing rules. Further, the Hon'ble Supreme Court was pleased to grant a stay on the operation of the common judgement/ order passed by the Hon'ble Punjab and Haryana High Court in CWP No. 38144/2018 and all the corresponding execution proceedings pending before the Authority.
- iv. That the instant complaint is barred by limitation. The complainants have alleged that the respondent was obligated to offer possession of the unit in question by December 2011 and by way of the instant complaint have sought interest for indemnifying them for the alleged delay in delivery of the unit in question. Cause of action, if any, for seeking interest accrued in favour of the complainants in 2011 and consequently the instant complaint is barred by limitation.
- v. That the present complaint is not maintainable in law or on facts. The provisions of the Act, 2016 are not applicable to the project in question. The

application for issuance of occupation certificate in respect of the tower in which the apartment in question is located was made on 30.06.2017, i.e. before the notification of the Rules, 2017 and the occupation certificate was thereafter issued on 25.01.2018. Thus, part of the project i.e. the tower in which the unit in question is situated is not an 'ongoing project' within the meaning of rule 2(1)(o) of the rules. The same does not require registration and consequently has not been registered under the provisions of the act.

- vi. That the complainants are not an "allottee" but an investor who has booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale. The apartment in question has been booked by the complainants as a speculative investment and not for the purpose of selfuse as their residence. Therefore, no equity lies in favour of the complainants.
- vii. That the original allottee approached the respondent and expressed interest in booking of an apartment in the residential group housing colony developed by respondent known as "Palm Drive" situated in Sector 66, Tehsil & District Gurgaon. Prior to the booking, complainants conducted extensive and independent enquiries with regard to the project, only after being fully satisfied on all aspects, that they took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question.
- viii. That thereafter the complainants vide an application form applied to the respondent for provisional allotment of the unit. Pursuant thereto, unit bearing no. TPD H-F07-704, located on the seventh floor, was allotted vide provisional allotment letter dated 25.09.2009. The original allottee consciously and willfully opted for a construction linked payment plan for remittance of sale consideration for the unit in question and further represented to the respondent that he shall remit every installment on time as per the payment schedule. The respondent had no reason to suspect the

bonafide of the original allottee and proceeded to allot the unit in question in his favor.

ix. Thereafter, a buyer's agreement dated 09.01.2010 was executed between the original allottee and the respondent. The buyer's agreement was consciously and voluntarily executed between the parties.

x. That pursuant thereto, the original allottee, made a request for transfer of the said allotment in the name of Mr. Manoj Choudhary and Mrs. Aman Choudhary ("subsequent allottees"). Accordingly, the parties submitted the agreement to transfer dated 25.05.2010 along with necessary indemnities and affidavits.

xi. That the respondent vide its letter dated 28.06.2010, confirmed the said transfer in favour of the subsequent allottee. Thereafter the subsequent allottees approached the respondent for transfer of the said allotment in favour of the complainants for transferring and conveying rights, entitlement and title of the original allottee and thereafter the subsequent allottee in the unit in question to the complainants. The complainants at the time of the said transfer in their favour, were fully aware of the status of the project and the delays so occasioned in its completion. The complainants being fully aware of the facts and circumstances, still chose to purchase the said unit and they are not entitled to any benefits for delay in completion of the project. The complainants out of their own free will and volition, without any inducement, force, misrepresentation or coercion of the respondent purchased the said unit from the erstwhile allottee, with open eyes and hence, cannot claim any compensation from the respondent. The said position was duly accepted and acknowledged by complainants. The complainants are conscious and aware of the fact that they are not entitled to any right or claim against respondent.

- xii. That the respondent vide the nomination letter dated 05.04.2011, confirmed the said transfer in favour of the complainants. In the manner as aforesaid, the complainants stepped into the shoes of the original allottee.
- xiii. That the rights and obligations of the complainants as well as the respondent are completely and entirely determined by the covenants incorporated in the buyer's agreement which continues to be binding upon the parties thereto with full force and effect. Clause 14 of the buyer's agreement provides that subject to the allottees having complied with all the terms and conditions of the agreement, and not being in default of the same, possession of the unit would be handed over by December 2011. It is further provided in the buyer's agreement that time period for delivery of possession shall stand extended on the occurrence of delay for reasons beyond the control of the respondent. The several allottees have defaulted in timely remittance of the instalments and hence the date of delivery option is not liable to determine the matter sought to be done by the complainants. The complainants are conscious and aware of the said agreement and have filed the present complaint to harass the respondent and compel the respondent to surrender to their illegal demands. It is submitted that the filing of the present complaint is nothing but an abuse of the process of law.
- xiv. That the clause 13(d) of the buyer's agreement provides that compensation for any delay in delivery of possession shall only be given to such allottees who are not in default of their obligations envisaged under the agreement and who have not defaulted in payment of instalments as per the payment plan incorporated in the agreement. In case of delay caused due to non-receipt of occupation certificate, completion certificate or any other permission/sanction from the competent authorities, no compensation or any other compensation shall be payable to the allottees. The complainants by way of instant complaint are demanding interest for alleged delay in

delivery of possession. the interest is compensatory in nature and cannot be granted in derogation and ignorance of the provisions of the buyer's agreement.

xv. That despite there being a number of defaulters in the project, the respondent had to infuse funds into the project and have diligently developed the project in question. The respondent applied for occupation certificate on 30.06.2017 and the same was thereafter issued vide memo bearing no. ZP-308-VOL-I/SD(BS)/2018/3486 dated 25.01.2018. Once an application for grant of occupation certificate is submitted for approval in the office of the concerned statutory authority, respondent ceases to have any control over the same. The grant of sanction of the occupation certificate is the prerogative of the concerned statutory Authority over which the respondent cannot exercise any influence. as far as the respondent is concerned, it has diligently and sincerely pursued the matter with the concerned statutory Authority for obtaining of the occupation certificate. No fault or lapse can be attributed to the respondent in the facts and circumstances of the case. therefore, the time period utilised by the statutory authority to grant occupation certificate to the respondent is necessarily required to be excluded from computation of the time period utilised for implementation and development of the project.

xvi. That, without admitting or acknowledging the truth or legality of the allegations advanced by the complainants and without prejudice to the contentions of the respondent, 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. Merely because the act applies to ongoing projects which are registered with the Authority, the act cannot be said to be operating retrospectively. the provisions of the act relied upon by the complainants for seeking interest

cannot be called in to aid in derogation and ignorance of the provisions of the buyer's agreement. The interest is compensatory in nature and cannot be granted in derogation and ignorance of the provisions of the buyer's agreement. The interest for the alleged delay or compensation demanded by the complainants is beyond the scope of the buyer's agreement and the same cannot be demanded by the complainants being beyond the terms and conditions incorporated in the buyer's agreement.

xvii. That the complainants had made several payments to respondent even after December 2011. In fact, the last payment was received from the complainants in April 2018, if there was in fact a delay in delivery of project as alleged by the complainants, then the complainants would not have remitted instalments after December 2011.

xviii. That the construction of the project/allotted unit in question already stands completed and the respondent has already offered possession of the unit in question to the complainants. The complainants were offered possession of the unit in question through letter of offer of possession dated 22.03.2018. the complainants were called upon to remit balance payment and to complete the necessary formalities/documentation necessary for handover of the unit in question to the complainants. An offer for possession marks termination of the period of delay, if any. The complainants are not entitled to contend that the alleged period of delay continued even after receipt of offer for possession.

xix. That upon completion of formalities, the complainants approached the respondent requesting it to deliver the possession of the unit in question. A unit handover letter dated 23.06.2018 was executed by the complainants, specifically and expressly agreeing that the liabilities and obligations of the respondent as enumerated in the allotment letter or the buyer's agreement stand satisfied. The complainants have intentionally distorted the real and

true facts in order to generate an impression that the respondent has reneged from its commitments. no cause of action has arisen or subsists in favour of the complainants to institute or prosecute the instant complaint. The complainants have preferred the instant complaint on absolutely false and extraneous grounds in order to needlessly victimize and harass the respondent.

- xx. That after execution of the unit handover letter dated 23.06.2018 and obtaining of possession of the unit in question, the complainants are left with no right, entitlement or claim against the respondent. The complainants have further executed a conveyance deed bearing vasika number 13146 dated 14.02.2019 in respect of the unit in question. The transaction between the complainants and the respondent stands concluded and no right or liability can be asserted by the respondent or the complainants against the other. The complainants have obtained possession of the unit in question and the complaint is a gross misuse of process of law.
- xxi. That the complainants have executed an indemnity cum undertaking dated 17.04.2018 whereby the complainants have declared and acknowledged that they have 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 complainants have admitted their obligation to discharge their HVAT liability thereunder.
- xxii. That the project has also got delayed on account of shortage of labor followed by the construction bans by NGT, which falls under the force majeure clause of the agreement.
- xxiii. That the construction of the project was affected on account of unforeseen circumstances beyond the control of the respondent developer. In the year, 2012 on the directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) was regulated. The Hon'ble Supreme Court directed framing of modern mineral concession

rules. The competent authorities took substantial time in framing the rules and in the process the availability of building materials including sand which was an important raw material for development of the said project became scarce. Further, the respondent was faced with certain other force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc.

xxiv. That thereafter, the complainants availed a loan facility from their bankers HDFC Ltd. and accordingly a tripartite agreement was executed in respect of the unit in question. Thus, HDFC is a necessary and proper party to the complaint. The complainants have failed to implead HDFC as a party to the present complaint. The complaint is liable to be dismissed on account of non-joinder of necessary party.

7. All other averments made in the complaint were denied in toto.

8. The complainant filed an application under Order I Rule 10 of the CPC on 11.09.2024 seeking to implead Dayanand as a respondent in the present complaint. Pursuant to this, vide order dated 24.12.2024, the Authority directed issuance of notice to Dayanand, and notice was accordingly issued to respondent no. 2 on 04.04.2025 to appear before the Authority. Vide proceedings dated 08.04.2025, the complainant was granted an opportunity to publish a notice to secure Dayanand's appearance, and the complainant subsequently made publication in the "*Navbharat Times*" and "*Times Nation*" on 24.04.2025. Despite service of notice and publication, respondent no. 2 failed to file a reply or appear before the Authority, and hence, the matter was

proceeded ex parte against respondent no. 2 vide proceedings dated 01.07.2025.

9. 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 submissions made by the parties.

E. Jurisdiction of the authority

10. The Authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

11. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

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

Section 11..... (4) 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,

13. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of

obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the objections raised by the respondent

F.I Objection regarding the complaint being barred by estoppel.

14. The respondent has raised an objection that the instant complaint is barred by estoppel as upon execution of conveyance deed and the transaction between the complainants and respondent stands satisfied. The Authority observed that though the conveyance deed has been executed on 14.02.2019 but as per proviso to Section 18 of the Act of 2016, if the allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed. In the present complaint, as per the possession clause of the buyers agreement, the due date of possession of the unit was March, 2012 but the same was offered on 22.03.2018 after a delay of almost 6 years. Therefore, the complainants are entitled for delay possession charges for the delayed period as statutory right of the complainant-allottee as per the provisions of Section 18 of the Act of 2016. Thus, in view of the agreed terms and conditions duly agreed between the parties and the provisions of the Act of 2016, the contention of the respondent stands rejected

F.II Objection regarding the complainant being investor.

15. The respondent has taken a stand that the complainants are the investors and not consumers, therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under Section 31 of the Act. The respondents also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observed that the respondents are correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute

and states main aims & objects of enacting a statute but at the same time 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 the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. 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;"

16. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainants, it is crystal clear that the complainants are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred 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 promoter that the allottee being an investor is not entitled to protection of this Act also stands rejected.

F.III Objection w.r.t application of occupation certificate of the project was made prior to notification of the Rules.

17. The respondent-promoter has raised the contention that the said project of the respondent is a pre-RERA project as the respondent has already made an application for occupation certificate to the competent authority on 30.06.2017 i.e. before the notification of the Rules, 2017.

18. The authority is of the view that as per proviso to Section 3 of Act of 2016, on-going projects on the date of commencement of this Act i.e, 01.05.2017 and for which completion certificate has not been issued, the promoter shall make an

application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act and the relevant part of the Act is reproduced hereunder:

"Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act".

19. The legislation is very clear in this aspect that a project shall be regarded as an "on-going project" until receipt of completion certificate. Since, the completion certificate is yet to be obtained by the promoter-builder with regards to the concerned project, therefore the plea advanced by it hereby rejected.

F.IV Objection regarding the complaint barred by Limitation Act, 1963.

20. Another contention of the respondent is that the cause of action arose in 2011, as the respondent was obligated to hand over possession by December 2011, as contended by the complainants. Hence, the complaint is barred by limitation. The Authority observes that although the cause of action to file the present complaint accrues in March, 2012 i.e. the date of handing over of possession as stipulated under the terms and conditions of the agreement but it is a settled situation now that after due date of possession of the unit, the cause of action is continuing till such obligation of offering the possession of the unit is fulfilled by the promoter-builder. In the present case, the subject unit was offered to the complainant on 22.03.2018. Thus, it was after date of such offer of possession when time for limitation starts tickling. Further, in view of Covid-19, Hon'ble Apex Court vide order dated 10.01.2022 in suo-moto W.P. (C) No. 3 of 2020 has declared period from 15.03.2020 to 28.02.2022 as zero period. Further, as per the scheme of calculating the remaining limitation as provided in the order of Hon'ble Supreme Court, the present complaint which was filed on 08.11.2021 is well within the limitation. Thus, the contention of promoter that the complaint is time barred by proviso of Limitation Act stands rejected

F.V Objection regarding nonjoinder of HDFC Bank as necessary party.

21. The respondent has raised a contention that the complainants has availed a loan from the HDFC and a tripartite agreement was executed, however, the complainant has not impleaded HDFC Bank as a necessary party is liable to be dismissed on account of non-joinder of necessary party. There is a letter dated 21.06.2008 stating that a housing loan has been advanced by the HDFC bank in favour of the complainant but no loan amount is mentioned in the said letter. Further no loan amount was disbursed by the bank to the complainant as per the documents available on record. Therefore, there is no privity of contract between the parties and there is no need to make the HDFC bank a party to the present complaint. Thus, the contention of the promoter stands rejected.

F.VI Objection regarding force majeure.

22. The respondent no.1/promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as shortage of labour and orders passed by National Green Tribunal (hereinafter, referred as NGT) and various other court orders. But all the pleas advanced in this regard are devoid of merit. The passing of various orders passed by NGT during the month of November is an annual feature and the respondent no.1 should have taken the same into consideration before fixing the due date. Similarly, the various orders passed by other authorities cannot be taken as an excuse for delay.

G. Relief sought by the complainants.

- G.I Direct the respondent to pay delayed possession charges at the prescribed rate of interest from the due date of possession till actual handing over of possession.**
- G.II Direct respondent to pay the balance amount due to the complainants from the respondent on account of the interest as per the guidelines laid in the Act, 2016.**
23. That the factual matrix of the case reveals that a Builder Buyer Agreement was executed on 09.01.2010 between the respondent and the original allottee i.e. Dayanand, for Unit H-704, Tower-H, 7th Floor, admeasuring 1950 sq. ft. (super area), for a total sale consideration of Rs.1/-. As per Clause 11 of the agreement,

possession of the said unit was to be handed over by December 2011 with grace period of 90 days. Thereafter, the original allottee i.e. Dayanand, entered into an agreement to transfer and assign rights with Manoj Choudhary and Aman Choudhary on 25.05.2010 for the subject unit for a sale consideration of Rs.93,16,890/-, and this transfer was confirmed by the respondent vide letter dated 28.06.2010.

24. Subsequently, Manoj Choudhary and Aman Choudhary entered into another agreement for sale with the complainants on 29.12.2010 for the same unit for a sale consideration of Rs.91,21,890/-, said transfer was also confirmed by the respondent through a nomination letter dated 05.04.2011.

25. The complainant, in the present complaint, has contended that they have paid a total sum of Rs.1,03,28,188/- towards the subject unit. On the contrary, the respondent, in its written submissions, has contended that as per the builder buyer agreement dated 09.01.2010, the total sale consideration of the subject unit was Rs.1/-. Upon perusal of the documents on record, it is evident that the builder buyer agreement dated 09.01.2010 executed between the original allottee and the respondent reflects a total sale consideration of Rs.1/-. Furthermore, the respondent issued a statement of account dated 06.06.2018 in the name of the complainant, showing an account summary clearly reflecting that the respondent has received a total of Rs.12,78,248/- against the subject unit.

26. Hence, it is evident from the records that the total sale consideration as per the builder buyer agreement dated 09.01.2010 is Rs.1/-, however the total amount received by the respondent against the subject unit is Rs.12,78,248/-.

27. The Authority has decided this issue in the complaint bearing no. **4031 of 2019 titled as Varun Gupta V/s Emaar MGF Land Ltd.** wherein the Authority has held that in cases where subsequent allottee has stepped into the shoes of original allottee before the expiry of due date of handing over possession and

before the coming into force of the Act, the subsequent allottee shall be entitled to delayed possession charges. So, the Authority is of the view that in cases where the subsequent allottee had stepped into the shoes of original allottee before the due date of handing over possession, the delayed possession charges shall be granted w.e.f. due date of handing over possession

28. The complainants intend to continue with the project and are seeking delay possession charges as provided under the Proviso to Section 18(1) of the Act. Section 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."*

(Emphasis supplied)

29. Clause 11 of the buyer agreement provides 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 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 developer, the developer proposes to hand over the possession of the unit by December 2011. The Allottee agrees and understands that the developer shall be entitled to a grace period of ninety (90) days, for applying and obtaining the completion certificate/occupation certificate in respect of the unit and/or the Complex.

(Emphasis supplied)

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

The complainants are seeking delay possession charges, 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, *ibid*. 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."

31. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid* 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.

32. 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., 29.07.2025 is @ 8.90%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.90%. (*Note: *Vide proceedings dated 29.07.2025 interest rate has been inadvertently recorded as 11.10%*)

33. 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—

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 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;"

34. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.90% by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
35. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent no.1 is in contravention of the provisions of the Act. By virtue of buyer's agreement executed between the parties, the possession of the subject unit was to be delivered by December 2011 with an additional grace period of 90 days. Therefore, the due date of possession comes out to be 30.03.2012. Occupation certificate was granted by the concerned authority on 25.01.2018 and thereafter, the possession of the subject unit was offered to the complainants on 22.03.2018. Subsequently, the unit was handed over to the complainants on 23.06.2018 and conveyance deed was registered in favor of complainants on 14.02.2019. Copies of the same have been placed on record. The Authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject unit and there is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 09.01.2010 to hand over the possession within the stipulated period.
36. Section 19(10) of the Act obligates the allottees 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 25.01.2018. The respondent no.1 offered the possession of the unit in question to the complainants only on 22.03.2018, so it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. These 2 months of reasonable time is being given to the

complainants keeping in mind that even after intimation of possession practically they have 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 till the expiry of 2 months from the date of offer of possession (22.03.2018) which comes out to be 22.05.2018.

G.III To set aside the one-sided indemnity bond get signed by the respondent from the complainant under influence.

37. In the present case, the conveyance deed was executed in favor of complainants on 14.02.2019 vide which the complainants have relinquished their rights on its execution. The relevant clause is reproduced below for reference:

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

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

H.Directions of the Authority

39. 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):

- I. The respondent no.1 is directed to pay interest to the complainants against the paid-up amount i.e. Rs.12,78,248/- at the prescribed rate of 10.90% p.a. for every month of a delay from the due date of possession, i.e., 30.03.2012 till the date of offer of possession (22.03.2018) plus two months i.e., 22.05.2018, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules, *ibid*. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per Rule 16(2) of the Rules, *ibid*.
 - II. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.90% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.
 - III. The respondent no.1 is directed to issue a revised statement of account after adjustment of delayed possession charges within a period of 30 days from the date of this order. The complainants are directed to pay outstanding dues if any remains, after adjustment of delay possession charges within a period of next 30 days.
40. Complaint as well as applications, if any, stand disposed off accordingly.
41. File be consigned to registry.



(Ashok Sangwan)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 29.07.2025