

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

Complaint no. 7156 of 2022
Date of filing: 11.11.2022
Date of Order: 15.07.2025

1. Sanjay Khosla
2. Deepika Khosla

Both R/o: - C-607, 6th Floor, Nirvana
Courtyard Sector-50, Gurugram, Haryana

Complainants

Versus

M/s Emaar India Limited
Regd. Office at: - 306-308, Square One,
C-2, District Centre, Saket
New Delhi

Respondent

CORAM:

Shri Arun Kumar
Shri Ashok Sangwan

Chairman
Member

APPEARANCE:

Sh. Gaurav Rawat (Advocate)
Sh. Harshit Batra (Advocate)

Complainants
Respondent

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 there under 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, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name of the project	Emerald Hills floors, Sec 65, Gurugram
2.	Unit no.	EHF-350-T-GF-126, Ground floor (Page 41 of the complaint)
3.	Super area	350 sq. yards (Page 41 of the complaint)
4.	Provisional allotment	08.09.2009 (Page 41 of the complaint)
5.	Buyer's agreement	17.03.2010 (Page 48 of the complaint)
6.	Possession clause	13. POSSESSION (A). Time and handing over the possession Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Floor within 27 months, from the date of execution of this Agreement. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of three months, for applying and obtaining the occupation certificate in respect of the Floor and/or the Project.
7.	Due date of possession	17.09.2012 (calculated from the date of buyer's agreement including grace period of 3 months)
8.	Total sale consideration	Rs.69,76,126/- (as per statement of account dated 09.10.2023 at page 206 of reply)

9.	Amount paid by the complainant	Rs.69,76,126/- (as per statement of account dated 09.10.2023 at page 206 of reply)
10.	Occupation certificate	18.09.2019 (Page 126 of the reply)
11.	Offer of possession	30.09.2019 (Page 131 of the reply)
12.	Unit handover letter	11.12.2019 (Page 141 of the reply)
13.	Deed of conveyance	06.01.2020 (Page 146 of the reply)

B. Facts of the complaint.

3. The complainants have made the following submissions:

- a) That as per clause 13(a) of the buyer's agreements, signed on 17.03.2010 the possession of the said unit was supposed to be delivered within 27 months from the date of execution of builder buyer agreement i.e., 17.06.2012. The offer of possession of the unit has been made after a delay of more than 7 years. Under Clause 15(a) of the builder buyer's agreement, upon delay of payment by the allottees, the respondent can charge Rs.10/- per sq. ft. interest per month of the super area. Further if the complainant fails to take possession the respondent may charge additional Interest @15% per annum compounded monthly /quarterly on the amount due and maintenance charges from the deemed date of possession as per notice of possession
- b) Under clause 16.1 of the buyer's agreement, upon the allottees would fail to take possession, the allottees shall pay the respondent holding charges @ Rs.10/-per sq. ft. of the super area of the apartment per month for the entire period of such delay. Interest @ Rs.15/- per annum compounded monthly/quarterly on the amount due as mentioned in the notice of possession from the due date till date of payment, maintenance charges from the deemed date of possession as per notice of possession.

- c) That in Clause 5 of the builder buyer agreement it is mentioned that company have the right to effect and/ or carry out such addition, alteration, deletions and modification, as the company may its sole option and discretion. Such Changes may include but shall not be limited to change in the building plan(s) of the Building/Independent Floors, Floor plans, Block or Super Area of the Independent Floor. If as a result of such changes, alteration, modification etc. there is any change in the location, preferential location, number, boundaries or super area of the Independent Floor, the company shall Intimate the same to the Allotee(s) who shall not raise any objection to the same.
- d) In case the alteration/Modification is less than 10% increase in the super area, then in such an event the company Shall not be obliged to take Consent from the allottee(s). A term of the contract will not be final and binding if it is shown that the Shop purchaser had no option but to sign on the dotted line, on a contract framed by the builder. The contractual terms of the agreement dated 17.03.2010 are ex-facie one sided, unfair, and unreasonable. The incorporation of such one-sided clauses in an agreement constitutes an unfair trade practice as per Section 2 (r) of the Consumer Protection Act, 1986 since it adopts unfair methods or practices for the purpose of selling the shop by the Builder”
- e) There is no parity in the remedies available to the complainants and the respondent showing biased and unfair trade practices of the respondent.
- f) That the possession of the property was not offered to the complainants as per promises made. Occupation certificate is one of the most important document of the Authority which the respondent has to obtain before handing over the possession but the respondent failed to enclose the occupation certificate and also failed to complete all other amenities and facilities assured at the time of selling the property and the handover would be termed as complete only when the entire amenities and facilities also are

provided and then only the handover is considered to be complete. The complainants had bought a flat in a complex and not in a standalone building and the amenities and facilities assured at the time of sealing are also required to be provided at the time of the handover:

Car Parking: The respondent has offered only one car parking instead of two which was agreed at the time of booking of the apartment. Therefore, the handover should be considered complete only when all the above important amenities and facilities are also provided together with the flat and the interest on the period of delay should be paid till the proper handover is given as elaborated above.

- g) That the complainant has paid more than 100% of the total payment of Rs.70,00,000/-. The 'Emerald Hills Floor' project was launched in the year 2009 with the promises to deliver in time and huge funds were collected over the period by the respondent. Even after taking more than 100% of the payments, the builder has delayed the project and is unable to handover possession after a delay of more than seven years.
- h) That the respondent vide offer of possession dated 30.09.2019 revised saleable area of our unit is 305 sq. yds. from 350 sq. yds. As the complainants booked the unit of 350 sq. yds. and paid accordingly to the respondent, but without getting our consent about the alteration of the floor the respondent upon his own discretion altered the area of the apartment.
- i) The complainants booked a 4BHK Apartment for their family requirement and without any information the respondent delivered a 3BHK Apartment, as mentioned earlier the complainants were in desperate need to get an Apartment had to take the possession but the respondent acted malafiedly and firstly altered the size of the Apartment and did not compensate the complainants with the alteration amount and delay possession charges. The

respondent is liable to pay Rs.25 lakhs for the alteration of the size of the apartment from 350 sq. yds. to 305 sq. yds.

- j) As the complaints always wanted to have 400 sq. yds. apartment according to their usage and choice but knowing the brand name of the respondent and having faith in the respondent, they booked an apartment of 350 sq. yds. As the decrease of the area from 350 sq. yds. to 305 sq. yds. the complaints are facing a lot of issues in settling up their life in that much small apartment and also, they have paid an entire money of Rs.70,00,000/- as per the apartment they booked was of 350 sq. yds. But the respondent kept quiet on this alteration and continued to charge the respondents according to the apartment they initially booked.
- k) The changes in the area of the unit have been held to be arbitrary and capricious by the Authority in a myriad of cases as the same amounts to changing the terms of the unit buyer's agreement which isn't permissible within the ambit of the Act, 2016 and subsequently of that of the Rules of 2017.
- l) The complainants therefore are entitled to be compensated for the delay of possession as the complaints being generous and were also in need to have an apartment so, they took the possession and paid all the payments without any delay and the respondent took an advantage of their situation did not take the consent for the alteration of the apartment and also did not provide a new payment plan according to the decreased area of the apartment.

C. Relief sought by the complainant(s):

4. The complainants herein are seeking the following relief(s):

- I. Direct the respondent to pay the entire amount of interest due to the complainants with effect from the committed date of possession as per the Floor Buyer's Agreement i.e., 17th June 2012 to the actual delivery of possession i.e. 11th December 2019 at the simple rate of interest as per the guidelines laid in RERA, 2016. The Respondent is liable to compensate for delay possession come to Rs. 52.5 lakhs as @ 10% per annum on Rs 70 lakhs for 7.5 years

- II. Direct the respondent to provide two Car Parking area instead of one car parking, as assured in the provisional Allotment Letter
- III. Direct the respondent to pay the Compensation for the alteration of the size of the Apartment from 350 sq. yds. to 305 sq. yds. The Respondent is liable to pay Rs. 25,00,000/- against the alteration of the unit.
- IV. Direct the respondent to Compensate the Complainant for Mental harassment and legal fee of Rs. 1,00,000/-.
- V. Direct the respondent to compensate for delay possession come to Rs. 52.5 lakhs as @ 10% per annum on Rs 70 lakhs for 7.5 years and Rs. 25 lakhs for the alteration of the size of the apartment from 350 sq. yds. to 305 sq. yds. Total Compensation Rs.77.5 Lakhs + 1,00,000= 78.5 Lakhs.

D.Reply by the respondent.

5. The respondent has contested the complaint on the following grounds:

- I. That the complainants have got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 17.03.2010.
- II. That the present complaint is not maintainable in law or on facts. The present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint are beyond the purview of this Authority and can only be adjudicated by the Adjudicating Officer/Civil Court.
- III. That the complainants are not "allottees" but investors who has booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale. The apartment in question has been booked by the complainants as a speculative investment and not for the purpose of self-use as their residence. Therefore, no equity lies in favor of the complainants.

- IV. That the complainants approached the respondent and expressed interest in booking of an apartment in the residential group housing colony developed by respondent known as "Emerald Hills-Floors" situated in Sector 65, Urban Estate Gurgaon, Haryana. Prior to the booking, the 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.
- V. That thereafter the complainants, vide an application form dated 21.08.2009 applied to the respondent for provisional allotment of the unit. Pursuant thereto, unit bearing no EHF-350-T-GF-126, located on the Ground floor, admeasuring 1750 sq. ft. (tentative area) was allotted vide provisional allotment letter dated 08.09.2009. The complainants 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 they shall remit every installment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainants and proceeded to allot the unit in question in their favor.
- VI. Thereafter, a buyer's agreement dated 17.03.2010 was executed between the complainants and the respondent. The buyer's agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on the parties. As per clause 13(a) of the agreement, the due date of possession was subject to the allottees having complied with all the terms and conditions of the agreement. That being a contractual relationship, reciprocal promises are bound to be maintained. The rights and obligations of allottee as well as the builder are completely and entirely determined by the covenants incorporated in the agreement which continues to be binding upon the parties thereto with full force and effect.

- VII. That the remittance of all amounts due and payable by the complainants under the agreement as per the schedule of payment incorporated in the agreement was of the essence. It has also been provided therein that the date for delivery of possession of the unit would stand extended in the event of the occurrence of the facts/reasons beyond the power and control of the respondent. It was categorically provided in clause 13(v) that in case of any default/delay by the allottees in payment as per the schedule of payment incorporated in the agreement, the date of handing over of possession shall be extended accordingly, solely on the respondent's discretion till the payment of all outstanding amounts to the satisfaction of the respondent.
- VIII. That the complainants had defaulted/delayed in making the due payments, upon which, reminders were also served to the complainants and had paid delayed payment interest at multiple occasions. The bonafide of the respondent is also essential to be highlighted at this instance, who had served a number of request letters and demand notes to the complainants to ensure that the payments are made in a timely fashion. Furthermore, the delivery of possession was also subject to the force majeure circumstances as under Clause 13(b) and Clause 30 of the agreement
- IX. That 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. Reference in this regard may be had to the judgment of Deepak Kumar vs State of Haryana, (2012) 4 SCC 629. 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. It is pertinent to state that the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide Order dated 02.11.2015 mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna River bed. These orders in fact inter-alia continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High Court and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was almost 2 years that the scarcity as detailed aforesaid continued, despite which all efforts were made and materials were procured at 3-4 times the rate and the construction continued without shifting any extra burden to the customer. The time taken by the respondent to develop the project is the usual time taken to develop a project of such a large scale and despite all the force majeure circumstances, the respondent completed the construction of the project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the complainants and demanding the prices only as and when the construction was being done.

- X. That the development and implementation of the said project have been hindered on account of several orders/directions passed by various authorities/forums/courts, before passing of the subjective due date of offer of possession.

S. n o.	Date of Order	Directions	Period of Restriction	Days affected	Comments
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1.	07.04.2015	National Green Tribunal had directed that old diesel vehicles (heavy or light) more than 10 years old would not be permitted to ply on the roads of NCR, Delhi. It has further been directed by virtue of the aforesaid order that all the registration authorities in the State of Haryana, UP and NCT Delhi would not register any diesel vehicles more than 10 years old and would also file the list of vehicles before the tribunal and provide the same to the police and other concerned authorities.	7 th of April, 2015 to 6 th of May, 2015	30 days	The aforesaid ban affected the supply of raw materials as most of the contractors/building material suppliers used diesel vehicles more than 10 years old. The order had abruptly stopped movement of diesel vehicles more than 10 years old which are commonly used in construction activity. The order had completely hampered the construction activity.
2.	19 th July 2016	National Green Tribunal in O.A. No. 479/2016 had directed that no stone crushers be permitted to operate unless they operate consent from the State Pollution Control Board, no objection from the concerned authorities and have the Environment Clearance from the competent Authority.	Till date the order in force and no relaxation has been given to this effect.	30 days	The directions of NGT were a big blow to the real estate sector as the construction activity majorly requires gravel produced from the stone crushers. The reduced supply of gravels directly affected the supply and price of ready mix concrete required for construction activities.
3.	8 th Nov, 2016	National Green Tribunal had directed all brick kilns operating in NCR, Delhi would be prohibited from working for a period of 2016 one week from the date of passing of the order. It had also been directed that no construction activity would be permitted for a period of one week from the date of order.	8 th Nov, 2016 to 15 th Nov, 2016	7 days	The bar imposed by Tribunal was absolute. The order had completely stopped construction activity.
4.	7 th Nov, 2017	Environment Pollution (Prevention and Control Authority) had directed to the closure of all brick kilns, stones crushers, hot mix plants, etc. with effect from 7 th Nov 2017 till further notice.	Till date the order has not been vacated	90 days	The bar for the closure of stone crushers simply put an end to the construction activity as in the absence of crushed stones and bricks carrying on of construction were simply not feasible. The respondent

					eventually ended up locating alternatives with the intent of expeditiously concluding construction activities but the previous period of 90 days was consumed in doing so. The said period ought to be excluded while computing the alleged delay attributed to the Respondent by the Complainants. It is pertinent to mention that the aforesaid bar stands in force regarding brick kilns till date is evident from orders dated 21 st Dec, 19 and 30 th Jan, 20.
5.	9 th Nov 2017 and 17 th Nov, 2017	National Green Tribunal has passed the said order dated 9 th Nov, 2017 completely prohibiting the carrying on of construction by any person, private, or government authority in NCR till the next date of hearing. (17 th of Nov, 2017). By virtue of the said order, NGT had only permitted the completion of interior finishing/interior work of projects. The order dated 9 th Nov, 17 was vacated vide order dated 17 th Nov, 17.		9 days	On account of passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.
			Total days	166 days	

XI. That from the facts indicated above and documents appended, it is comprehensively established that a period of 166 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of orders by the statutory authorities. All the circumstances stated hereinabove come within the meaning of force majeure, as stated above. Thus, the respondent has been prevented by circumstances beyond its power and control from undertaking the implementation of the project during the time period indicated above and

therefore the same is not to be taken into reckoning while computing the period of 48 as has been provided in the Agreement. In a similar case where such orders were brought before the Hon'ble Authority in the Complaint No. 3890 of 2021 titled "*Shuchi Sur and Anr vs. M/S Venetian LDF Projects LLP*" decided on 17.05.2022, the Authority was pleased to allow the grace period and hence, the benefit of the above affected 166 days need to be rightly given to the respondent builder.

- XII. That all these circumstances come within the purview of the force majeure clause and hence allow a reasonable time to the respondent. The respondent had the right to suspend the construction of the project upon happening of circumstances beyond the control of the complainants as per Clause 13(b), however, despite all the hardships faced by the respondent, the respondent did not suspend the construction and managed to keep the project afloat through all the adversities. The Hon'ble Supreme Court noted in the case *Saradmani Kandappan and Ors Vs S. Rajalakshmi and Ors*, decided on 04.07.2011, MANU/SC/0717/2011: (2011) 12 SCC 18 held that the payments are to be paid by the purchaser in a time-bound manner as per the agreed payment plan and he fails to do so then the seller shall not be obligated to perform its reciprocal obligations and the contract shall be voidable at the option of the seller alone and not the purchaser.
- XIII. That the project underwent a change/modification and upon the same being done, objections/suggestions for approval of building plans were invited from the complainants on 13.08.2017, to which the complainants had given their consent and no objection was raised by them.
- XIV. 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. That occupation certificate in respect of the said unit was issued vide dated 18.09.2019. 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 utilized by the statutory authority to grant occupation certificate to the respondent is necessarily required to be excluded from computation of the time period utilized for implementation and development of the project.

- XV. That an indemnity cum undertaking for possession dated 28.09.2019 of the said unit was executed between the complainants and the respondent for use and occupation of the said unit 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. The instant complaint is preferred in complete contravention of their earlier representations and documents executed.
- XVI. That thereafter, the complainants were offered possession of the unit in question through letter of offer of possession dated 30.09.2019. The complainants were 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 the complainants but on the contrary, the complainants failed to take the possession of the said unit, hence, a subsequent offer of possession dated 11.12.2019 was issued to the complainants requesting them to remit the remaining payments and to complete the documentary and necessary formalities in order to take the

possession of the said unit but all requests fell on deaf ears of the complainants. The complainants delayed the procedure of taking the possession of the said unit on their own account.

- XVII. That the allegations of the complainants that possession was to be delivered by June, 2012 are wrong, mala fide and result of an afterthought in view of the fact that the complainants made the payments after June, 2012. At the time of execution of indemnity cum undertaking, the complainants were well aware that they are not entitled to any interest whatsoever.
- XVIII. That the respondent earnestly requested the complainants to obtain possession of the unit in question and further requested the complainants to execute a conveyance deed in respect of the unit in question after completing all the formalities regarding delivery of possession. However, the complainants did not pay any heed to the legitimate, just and fair requests of the respondent and threatened the respondent with institution of unwarranted litigation.
- XIX. That the complainants are defaulting parties who has delayed in remitting the timely instalments. The complainants approached the respondent for compensation and for waiver of the delayed payment charges despite knowing the fact that the complainants themselves have defaulted in making timely payments. The complainants were compensated as per the terms of the buyer's agreement.
- XX. That the complainants did not have adequate funds to remit the balance payments requisite for obtaining possession in terms of the buyer's agreement and consequently in order to needlessly linger on the matter, the complainants refrained from obtaining possession of the unit in question. The complainants needlessly avoided the completion of the transaction with the intent of evading the consequences enumerated in the buyer's agreement. Therefore, there is no equity in favor of the complainants. 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. The complainants have consciously and maliciously refrained from obtaining possession of the unit in question. Consequently, the complainants are liable for the consequences including holding charges, as enumerated in the buyer's agreement, for not obtaining possession. The complainants finally took the possession of the Unit on 11.12.2019. That multiple requests were made to the complainants regarding execution of the conveyance deed and consequently, the conveyance deed was executed on 06.01.2020. It was specifically and expressly agreed 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 favor of the complainants to institute or prosecute the instant complaint.

XXI. That moreover, without accepting the contents of the complaint in any manner whatsoever, and without prejudice to the rights of the respondent, the respondent has credited an amount of Rs.6,968/- on account of Anti-Profiting, a sum of Rs. 31,29,230/- in lieu of the benefit of Early Payment Rebate (EPR) and an amount of Rs. 13,64,735/- as compensation to the complainants on account of the delay caused due to the default of the complainants in timely remittance of instalments and due to the reasons beyond the control of the respondent. The respondent has always adhered to the terms and conditions of the buyer's agreement.

XXII. That the alteration in the said unit as alleged by the complainants has been carried out as per the sanctioned plans approved by the competent authorities and as per the provisions of the buyer's agreement.

Objections/suggestions for approval of building plans were invited from the complainants on 13.08.2017, to which the complainants had given their consent and no objection. The complainants at the time of booking of the said unit were made aware that the unit allotted to them is provisional in nature and subject to change as per the sanctioned plans. The complainants have been credited an amount of Rs.2,70,000/- as the refund of decrease in the said unit. The said amount has been credited as per the terms and conditions of the agreement and the same was acknowledged by the complainants without any demur/protest.

- XXIII. The complainants in order to fulfil their illegal demands sent a legal notice to the respondent. The said legal notices were duly replied by the respondent vide its reply dated 24.05.2022. The complainants vide their legal notice raised several illegal demands and objections which were duly cleared by the respondent by its reply to the same.
- XXIV. That moreover, after the execution of the conveyance deed, the contractual relationship between the parties stands fully satisfied and comes to an end. There remains no claim/ grievance of the complainants with respect to the agreement or any obligation of the parties thereunder. After the execution of the conveyance deed, the parties are estopped from making any claims at this instance.
- XXV. That moreover, without accepting the contents of the complaint in any manner whatsoever, and without prejudice to the rights of the respondent, delayed interest if any has to be calculated only on the amounts deposited by the allottees/complainants towards the basic principal amount of the unit in question and not on any amount credited by the respondent, or any payment made by the allottees/complainants towards delayed payment charges or any Taxes/Statutory payments, etc.

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

7. 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.
8. 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 those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority.

9. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

10. 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

11. 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)(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."

12. 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 complainants at a later stage.

F. Findings on the objection raised by the respondent.

F.1 Objection regarding force majeure conditions:

13. The respondent-promoter has raised the contention that the construction of the project has been delayed due to force majeure circumstances such as orders/restrictions of the NGT as well as competent authorities, High Court and Supreme Court orders, shortage of labour force in the NCR region, restriction on usage of water for construction purposes, heavy shortage of supply of construction material etc. However, all the pleas advanced in this regard are devoid of merit. First of all, the possession of the unit in question was to be offered by 17.09.2012. Hence, events alleged by the respondent do not have any impact on the project being developed by the respondent. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter/respondent cannot be granted any leniency on based of aforesaid reasons and it is a well settled principle that a person cannot take benefit of his own wrong.

G. Findings on the relief sought by the complainants.

G.1 Direct the respondent to pay the entire amount of interest due to the complainants with effect from the committed date of possession as per the Floor Buyer's Agreement i.e., 17th June 2012 to the actual delivery of possession i.e. 11th December 2019 at the simple rate of interest as per the guidelines laid in RERA, 2016. The respondent is liable to compensate for delay possession come to Rs. 52.5 lakhs as @ 10% per annum on Rs 70 lakhs for 7.5 years

14. The factual matrix of the case reveals that the complainants booked a unit in the respondent's project, pursuant to which the respondent issued a provisional allotment letter dated 08.09.2009, allotting unit no. EHF-350-T-GF-126, ground floor admeasuring 350 sq. yards in the project "Emerald Hills Floors, Sector-65, Gurugram." Subsequently, a Builder-Buyer Agreement was executed between the parties on 17.03.2010 for a total sale consideration of

Rs.66,00,000/-. The complainants have paid a total sum of Rs.69,76,126/- towards the sale consideration. The subject unit was offered to the complainants on 30.09.2019. Further, the unit was handed over to the complainants on 11.12.2019, and a conveyance deed was thereafter executed in their favor on 06.01.2020.

15. It is important to note that the conveyance deed was executed between the parties on 06.01.2020. The conveyance deed is a legal document that transfers the title of property from one party to another, signifying the completion of the property transaction especially regarding payments related to the purchase price, taxes, registration fees, and any other contractual financial commitments outlined in the agreement. However, despite the conclusion of the financial obligations, the statutory rights of the allottee persist if any provided under the relevant Act/Rules framed thereunder. Execution of conveyance deed is a sort of entering into a new agreement which inter alia signifies that both parties are satisfied with the considerations exchanged between them, and also that all other obligations have been duly discharged except the facts recorded in the conveyance deed.
16. The complainants took the possession and got the conveyance deed executed, without any demur, protest or claim. The complainants have neither raised any grievance at the time of taking over the possession or at the time of execution of the conveyance deed, nor reserved any right in the covenants of the conveyance deed, to claim any refund of preferential location charges or any other charges. Also, it is a matter of record that no allegation has been levelled by the complainants that conveyance deed has been got executed under coercion or by any unfair means.
17. The Authority is of view that after the execution of the conveyance deed between the complainants and the respondent, all the financial liabilities between the parties come to an end except the statutory rights of the allottee

including right to claim compensation for delayed handing over of possession and compensation under Section 14 (3) and 18 of the Act, 2016. In view of the above, the complainants cannot press for any other relief with respect to financial transaction between the parties after execution of conveyance deed except the statutory obligations specifically provided in the Act of 2016.

18. The complainants herein 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."

19. Clause 13 of the buyer's agreement dated 17.03.2010 provides the time period of handing over possession and the same is reproduced below:

"13. POSSESSION

(A). Time and handing over the possession

Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Floor within 27 months, from the date of execution of this Agreement. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of three months, for applying and obtaining the occupation certificate in respect of the Floor and/or the Project.

(Emphasis supplied)

20. **Admissibility of grace period:** As per clause 13 of buyer's agreement, the respondent promoter proposed to handover the possession to the complainant within 27 from the date of execution of buyer's agreement with additional grace period of three months. Accordingly, the due date of possession comes out 17.09.2012 inclusive of grace period of three months.

21. 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 promoters, 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]
For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:
Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."*

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

23. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 15.07.2025 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 15.07.2025 interest rate has been inadvertently recorded as 11.10%)

24. The definition of term 'interest' as defined under Section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

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

Explanation. —For the purpose of this clause—

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

25. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.90% by the respondent which is the same as is being granted to them in case of delayed possession charges.
26. 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 13 of the buyer's agreement executed between the parties, the possession of the subject unit was to be delivered by 17.09.2012. The respondent has obtained the occupation certificate on 18.09.2019 and has offered the possession of the allotted unit on 30.09.2019. The authority is of the considered view that there is delay on the part of the respondent to offer possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 17.03.2010 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 17.03.2010 to hand over the possession within the stipulated period
27. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 18.09.2019. The respondent offered the possession of the unit in question to the complainants only on 30.09.2019, 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 complainant 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 she has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession (17.09.2019) till offer of possession (30.09.2019) plus two months i.e. 30.11.2019.

28. 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 complainants are entitled to delayed possession at prescribed rate of interest i.e., 10.90% p.a. w.e.f. 17.09.2019 till 30.11.2019 i.e., expiry of 2 months from the date of offer of possession (30.09.2019) as per provisions of Section 18(1) of the Act read with rule 15 of the rules and Section 19(10) of the Act.
29. It is pertinent to note that the respondent in its reply as well as during proceedings dated 15.07.2025 submitted that an amount of Rs.6,968/- has been credited on account of Anti-Profiting, a sum of Rs.31,29,230/- in lieu of the benefit of Early Payment Rebate (EPR) and an amount of Rs.13,64,735/- as compensation to the complainants. In view thereof, the interest for the delay period is to be computed on the actual amount paid by the complainants towards the sale consideration of the subject unit.

G.II Direct the respondent to provide two car parking area instead of one car parking, as assured in the provisional allotment letter.

30. The complainants have sought relief regarding the provision of two car parking spaces as assured by the promoter in the allotment letter. As per the provisional allotment letter dated 08.09.2009, it is explicitly stated that two

dedicated car parking spaces were allotted to the complainants. During the proceedings dated 15.07.2025, the respondent submitted that the rectification of the conveyance deed, concerning the two car parking spaces sought by the complainants, has been carried out. A rectification deed to the conveyance deed bearing No. 12665 dated 06.01.2020, executed on 11.04.2025 in favor of the complainants, has been placed on record. The counsel for the complainants raised no objection in this regard during the proceedings. Accordingly, as the relief sought has been complied with by the respondent and stands fulfilled, no further directions are required.

G.III Direct the respondent to pay the Compensation for the alteration of the size of the Apartment from 350 sq. yds. to 305 sq. yds. The Respondent is liable to pay Rs. 25,00,000/- against the alteration of the unit.

G.IV Direct the respondent to Compensate the Complainant for Mental harassment and legal fee of Rs. 1,00,000/-.

G.V Direct the respondent to compensate for delay possession come to Rs. 52.5 lakhs as @ 10% per annum on Rs 70 lakhs for 7.5 years and Rs. 25 lakhs for the alteration of the size of the apartment from 350 sq. yds. to 305 sq. yds. Total Compensation Rs.77.5 Lakhs + 1,00,000= 78.5 Lakhs.

31. The complainants are seeking relief w.r.t compensation and legal expense.


Hon'ble Supreme Court of India in case titled *as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & rs. 2021-2022(1) RCR (C), 357* held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the adjudicating officer as per Section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

H. Directions of the Authority.

32. Hence, the Authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligations

cast upon the promoter as per the function entrusted to the authority under Section 34(f):

- I. The respondent is directed to pay delay possession charges on the amount paid by the complainants at the prescribed rate of 10.90% p.a. for every month of delay from the due date of possession i.e., 17.09.2012 till the date of offer of possession plus two months i.e., 30.11.2019 to the complainants. 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 allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.90% by the respondent which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.
33. Complaint as well as applications, if any, stand disposed off accordingly.
34. File be consigned to the registry.



Ashok Sangwan
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Date: 15.07.2025



Arun Kumar
(Chairman)