

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

Complaint no. : 6105 of 2024
Date of order : 26.11.2025

1. Rajeev Kar
2. Nandini Kar

Both R/o: Apartment no.301, Tower-37,
Emerald Floors Premier, Adjacent to World Mark,
Sector-65, South City-II, Gurugram.

Complainants

Versus

M/s Emaar MGF Land Ltd.
Office at: - House 28, Kasturba Gandhi Marg,
New-Delhi-110001.

Respondent

CORAM:
Ashok Sangwan

Member

APPEARANCE:

Sukhbir Yadav (Advocate)
Dhruv Rohtagi (Advocate)

**Complainants
Respondent**

ORDER

1. The present complaint has been filed by the complainants/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 project	Emerald Floor Premier Phase-III
2.	Location of project	Sector-65, Urban Estate, Gurugram
3.	Nature of project	Group housing
4.	DTCP License	License no. 06 of 2008 Dated-17.01.2008
5.	HRERA registered	Not Registered
6.	Allotment letter	14.09.2011 (As on page no. 28 of complaint)
7.	Unit no.	EFP-111-37-0301, Floor-3 rd , Building no.-37 (As on page no. 35 of complaint)
8.	Unit Area	1650 sq.ft. [Super Area] (As on page no. 35 of complaint)
9.	Buyer's Agreement	28.02.2012 (As on page no. 33 of complaint)
10.	Possession clause	Clause 11 POSSESSION' a)Time of handing over the

		<p>possession</p> <p><i>Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 24 months from the date of execution of Buyer's 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 unit and/or the Project.</i></p> <p>[Emphasis supplied] (As on page no. 43 of complaint)</p>
11.	Due date of possession	<p>28.05.2014</p> <p>[Calculated 24 months from the date of execution of the agreement + 3 months grace period]</p>
12.	Payment plan	Construction linked plan
13.	Sale consideration	<p>Rs.1,15,27,289.04/-</p> <p>(As per schedule of payment on page no. 54 of complaint)</p>
14.	Amount paid	<p>Rs.1,23,63,629/-</p> <p>(As per S.O.A dated 18.11.2020 on [page no. 97 of complaint])</p>
15.	Occupation certificate	<p>11.11.2020</p> <p>(As on page no. 210 of reply)</p>
16.	Offer of possession	<p>18.11.2020</p> <p>(As on page no. 92 of complaint)</p>

17.	Settlement cum amendment agreement	04.05.2018 (As on page no. 88 of complaint)
18.	Unit handover letter	06.03.2021 (As on page no. 100 of complaint)
19.	Conveyance Deed	21.06.2021 (As on page no. 104 of complaint)

B. Facts of the complaint

3. The complainants have made the following submission: -

- I. That in April 2011, the complainants received a marketing call from the office of the respondent regarding a residential project namely "Emerald Floors Premier-III" situated at Sector - 65, Gurugram. The complainants visited the Gurugram office and project site of the respondent. They met the marketing staff of the respondent and received information about the project.
- II. That, believing on representation and assurance of Respondent, on 14.05.2011, the Complainants, booked an apartment bearing No. EFP-III-37-0301 on 3rd Floor on Building No. 37 - for size measuring 1650 sq. ft. and issued three cheques of Rs.10,00,000/- as booking amount and signed a pre-printed application form. Thereafter, on 30.08.2011, the respondent issued a letter confirming the booking and acknowledging the payment of Rs.10,00,000/-.
- III. That on 14.09.2011, the respondent issued a Provisional Allotment Letter along with a payment plan, conforming the allotment of apartment no. EFP-III-37-0301 on the 3rd Floor on Tower - 37 for size admeasuring 1650

- sq. ft. It is pertinent to mention here that the apartment was booked for a total sale consideration of Rs.1,15,27,289.04/-.
- IV. That after a long follow-up on 28.02.2012, a pre-printed, unilateral, arbitrary Builder Buyer's Agreement/Buyer's Agreement was executed inter-se the respondent and the complainants. According to Clause 11(a) of the Buyer's Agreement, the respondent was to give possession of the said flat within 24 months from the date of execution of the Buyer's Agreement and was entitled for a grace period of 03 (Three) months. Therefore, the due date of possession was on or before 28.05.2014.
- V. That on 25.06.2017, the respondent sent an email to the complainants stating that "we are please to announce that notwithstanding the terms of the Buyers Agreements and/ or any other agreement / documents between the Company and your good self, and in the line with the Real Estte Regulation Act (RERA) that come into effect on 1st May 2017, Delayed Payment Charges will be levied @ 10%(2% points above the SBI lending rate) per annum effective 1st May, 2017. The Buyer Agreement and / or other agreement / document shall stand superceded and modified to this effect".
- VI. That the complainants continued to pay the demand as and when raised by the respondent, but the respondent failed to hand over physical possession of the unit. The complainants regularly visited the office and project site and followed up for the exact date of possession of their home. After almost 04 years from the due date of possession, the respondent called the complainants for a settlement and assured that the physical possession of the unit shall be given in by on before 31.08.2018 and asked to sign a "Settlement-Cum-Amendment Agreement". That finding no way to get the physical possession of their dream home on 04.05.2018, the complainants signed the said document under protest. It would be germane to mention here that as per Clause 'B' of the said agreement, it

was represented to the allottees that the unit was ready for occupation and use/will be ready for occupation and use shortly.

- VII. Believing on the assurances given by the respondent, the complainants signed the said agreement and agreed to extend the time period for the handover of possession.
- VIII. That after signing the above agreement, the respondent had to wait for 30 long months to get an offer of possession and 04 more months. In view of the above, it is not incorrect to say that consent of the allottees to said "Settlement-Cum-Amendment Agreement" was taken by fraud and hence, the agreement stands voidable at the instance of allottees as per Section-19 of the Indian Contract Act-1872.
- IX. That after a long follow-up, the respondents issued a letter for an offer of possession on 18.11.2020 and demanded various unreasonable demands under various heads i.e. Rs.1,05,372/- as Electricity Meter Charges, Rs.82,500/- as Interest-Free Maintenance Security, Rs.14,160/- as Administrative Charges, Rs.69,300/- as Advance Monthly Maintenance Charges and Rs.22,661/- as Electric Meter Charges. The notice for possession contains illegal and unjustifiable demands, therefore not tenable in the eyes of the law, moreover, the respondent did not credit delayed possession interest as per the Act, 2016.
- X. That there have been a series of e-mails sent by the allottees to the respondents regarding the issue of illegal charges and deficiencies in the construction quality. Finally, the unit was handed over to the complainants on 06.03.2021.
- XI. That the deficiencies were not rectified and the complainants were not allowed to write "UNDER PROTEST" on the handover letter, they were threatened that possession would not be handed over if they make any such endorsement on the handover letter. However, the possession was

taken under protest as mentioned in the E-mail dated 07.03.2021. The same was acknowledged by the respondents in their reply E-mail dated 18.03.2021. The relevant part of the contents of email is produced for ready reference:-

[E-Mail dated 07.03.2021]

"Yesterday we took possession of our apartment, there were several quality issues as below:-

Thirty to thirty five tiles in all the rooms are stained/ marked/ hammer marked.

AC overflow pipes left open in two bathrooms rather than it being put into the drain. This is extremely unhygienic as there will be water in bathrooms all the time when the ACs are running.

The walls have been damaged by the installation of the voltage stabilizer for the ACs. Large chunks of cement have fallen out due to carelessness of the person installing the stabilizers.

The Kitchen as per BBA was to be "Modular", but other than the drawer below the hob, the entire kitchen is basic NOT MODULAR!

The door handles seem as if they were installed ten years ago. Stained, old and shaky for all doors including the UPVC doors.

Shade difference in the tiles in the bathroom and this is the case when I have highlighted this before to Kanika Khanna personally.

After this, when I wrote UNDER PROTEST on the handover letter I was told that they would not give me possession yesterday by a Baljeet from the handover team. I asked him to cut it as I did not want the possession delayed anymore, to which he said that was not possible now. When I asked him to call the head office and get a new handover letter, he flatly refused and did not bother to even make a call to the head office.

I then went to the head office along with my wife and after two hours wait, managed to get a fresh handover letter issued.

We went back to the site and took to handover which was finally at 1600 hrs instead of 1000hrs in the morning.

The apartment has been put together like a janta LIG flat rather than a 1.3 Crore apartment.

Emaar is least bothered to listen to our concerns on anything, be it reduction in compensation due to the pandemic or name change to reduce the registration fees. The quality of the apartment is disgusting and deplorable as is the treatment to the customers.

This possession has been taken UNDER PROTEST as we have had absolutely no one from Emaar who has bothered to take the time to sort out our issues.

- XII. Thereafter, a Conveyance Deed was executed on 22.04.2021 in the format provided by the respondent. Despite paying more than 70% of total sale consideration, the respondent delivered the possession on 06.03.2021 i.e. after almost after 7 years of delay. There is a deficiency of service and unfair trade practice on the part of the respondent and
- XIII. That the cause of action for the present complaint arose 28.05.2014, when the respondent failed to handover possession of the flat as per the Buyer's Agreement. The cause of action again arose on 04.05.2018 when on false promises, the respondent deceitfully got consent of complainants for a Settlement-cum-Amendment Agreement. The cause of action is continuing and will continue to subsist till such time as the Authority passes the necessary orders.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- Direct the respondent to provide the delayed possession interest at the prescribed rate from the due date of possession till the actual handing over of possession.
 - Direct the respondent to refund the various illegal and unreasonable demands by the respondent which were paid by the complainant under protest.
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.

6. The respondent has contested the complaint on the following grounds: -
- I. That the complainants are estopped by their own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. The complainants have executed a settlement agreement dated 04.05.2018 with the respondent in full and final settlement of all the claims, contentions and grievances harboured by them. The settlement agreement expressly records that the complainants are left with no further claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses, compensation etc. in respect of the unit in question against the respondent. The complainants are bound by the terms and conditions of the said agreement which supersedes all earlier agreements between the parties. The filing of the present complaint is nothing but an abuse of process of law on the part of the complainants.
 - II. That the letter of offer of possession had been issued by the respondent on 18.11.2020. Thereafter, the physical possession of the unit in question had been obtained by the complainants on 06.03.2021. Moreover, Conveyance Deed bearing vasika no.1870 had been got registered on 21.06.2021. However, the present complaint has only been filed on 23.12.2024. Thus, there is a huge delay of more than three years in filing of the complaint by the complainants (from both the date of obtaining of physical possession as well as registration of conveyance deed) and the same is barred by limitation. The complaint is liable to be dismissed on this ground as well.
 - III. That the complainants had approached the respondent and expressed an interest in booking an apartment in the residential group housing colony developed by the respondent known as "Emerald Floors Premier-III" situated in Emerald Hills, Sector 65, Gurugram.
 - IV. That the complainants vide application form dated 14.05.2011 applied for provisional allotment of a unit in the project. The complainants, in

pursuance of the aforesaid application, were initially allotted an independent unit bearing no. EFP-III-37-0301 in the said project. Provisional allotment letter dated 14.09.2011 had been issued by the respondent in this regard. The complainants consciously and wilfully opted for a "construction-linked plan" for remittance of the 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.

- V. That the complainants had defaulted in remittance of installments on time. The respondent was compelled to issue demand notices, reminders etc. calling upon the complainants to make payment of outstanding amounts payable by them under the payment plan/instalment plan opted by them. However, the complainants, despite having received the payment request letters, reminders etc. failed to remit the instalments on time to the respondent.
- VI. That Buyer's Agreement was executed between the complainants and respondent on 28.02.2012. Clause 13 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.
- VII. The complainants, having defaulted in timely remittance of instalment, were thus not entitled to any compensation or any amount towards interest as an indemnification for delay, if any, under the Buyer's Agreement.
- VIII. That as per Clause 11 of the buyer's agreement, the time period for delivery of possession was 24 months along with grace period of 3 months from the date of execution of the buyer's agreement subject to the allottee(s) having strictly complied with all the terms and conditions of the buyer's agreement and not being in default of any provision of the buyer's agreement including

remittance of all amounts due and payable by the allottee(s) under the agreement as per the schedule of payment incorporated in the buyer's agreement.

- IX. That the complainants have defaulted in timely remittance of the instalments and hence the date of delivery of possession of the unit in question is not liable to be determined in the manner sought to be done by the complainants.
- X. That the complainants were yet again reminded by the respondent of the defaults committed by them in making timely payment of the balance sale consideration amount. Eventually, settlement cum amendment agreement dated 04.05.2018 had been executed between the complainants and the respondent. The date of handing over of physical possession of the unit in question had been extended by way of the aforesaid settlement cum amendment agreement. Furthermore, the complainants had duly accepted that they had delayed in making payment of installments to the respondent and hence, they were not entitled to any compensation on account of the alleged delay in handing over the unit by the respondent.
- XI. That upon payment of compensation charges by the respondent, the complainants would not be eligible for payment of compensation or raising any other claim against the respondent under the Act or any other law for the time being enforced (Clause 5). In terms of the aforesaid clause, compensation of Rs.11,33,754/- had been credited to the account of the complainants on 18.11.2020. Furthermore, the following amounts had also been credited to the account of the complainants: -
- a) Rs.51,970/- on account of anti-profiting on 18.12.2018
 - b) Rs.8,467/- on account of anti-profiting on 12.04.2019
 - c) Rs.1,21,308/- on account of anti-profiting on 19.08.2019

- XII. That although the complainants are not entitled to any compensation under Clause 13(c) of the Buyer's Agreement, nevertheless, the respondent has credited the aforesaid amounts. Without prejudice to the contentions of the respondent that the complaint under reply is not maintainable, delayed interest if any has to be calculated only on the amounts deposited by the allottees/complainants towards the basic principle amount of the unit and not on any amount credited by the respondent, or any payment made by the allottees/complainants towards Delayed Payment Charges (DPC) or any Taxes/Statutory payments etc.
- XIII. Thus, the complainants are estopped from filing the present complaint on account of execution of the settlement cum amendment agreement. The respondent has already done its part insofar the aforesaid settlement cum amendment agreement is concerned. The complaint filed by the complainants is liable to be dismissed on this ground alone.
- XIV. Eventually, letter of offer of possession dated 18.11.2020 had been issued by the respondent to the complainants calling upon the complainants to make the balance payment. Furthermore, indemnity cum undertaking dated 28.12.2020 had also been executed by the complainants in favour of the respondent.
- XV. That the physical possession of the unit was handed over to the complainants on 06.03.2021. It would not be out of place to mention that in terms of the aforesaid letter, the complainants were satisfied with the unit and had acknowledged that the liabilities and obligations of the respondent as enumerated in the allotment letter/buyer's agreement towards the complainants stood satisfied.
- XVI. That furthermore, conveyance deed bearing vasika no.1870 dated 21.06.2021 had been executed between the parties in respect to the unit in question. Besides being barred by limitation, it is pertinent to mention that

the delayed payment charges / interest cannot be granted to the allottee after execution of the conveyance deed.

XVII. That it is submitted that the project has got delayed and changes had to be incorporated in the layout plan on account of the following reasons which were/are beyond the power and control of the respondent:

I. Second staircase issue:

- i. *The building plans for the apartment/tower in question was approved by the competent authority under the then applicable National Building Code in terms of which buildings having height of 15mtrs or above but having area of less than 500 sq. metres on each floor, were being approved by the competent authorities with a single staircase and construction was being carried out accordingly.*
- ii. *Subsequently, the National Building Code (NBC) was revised in the year 2016 and in terms of the same, all high-rise buildings (i.e. buildings having height of 15 metres and above), irrespective of the area of each floor, are now required to have two staircases.*
- iii. *Furthermore, it was notified vide Gazette published on 15.03.2017 that the provisions of NBC 2016 supersede those of NBC 2005.*
- iv. *The Fire Department is seeking to retrospectively apply the said provision and while processing the Fire NOC application has been insisting on two staircases in all high rise buildings even in cases where the building plans stood approved with a provision for a single staircase and which have been constructed accordingly. The Fire Department has issued a provisional Fire NOC with the requirement that the second staircase would be constructed by the Developer within one year from the date of issuance of the provisional Fire NOC.*
- v. *In view of the practical difficulties in constructing a second staircase in a building that already stands constructed according to duly approved plans, the Respondent made several representations to various Government Authorities requesting that the requirement of a second staircase in such cases be dispensed with. It was pointed out by the Respondent that construction of a second stair case would not be possible for several technical reasons such as obstruction of Fire tender path, violation of the setback norms, violation of fire safety norms in as much as the second staircase would not be connected to the common lobby area and that construction of second staircase by connecting balconies of the dwelling units would pose a security and privacy concern. The Respondent had also pointed out that the allottees of the dwelling units were also eagerly awaiting possession of their units since long and requested that the Fire NOC be issued without any preconditions.*
- vi. *The Fire department inspected the site of the project and sought alternate proposals from the Respondent to meet the requirement of second staircase in the buildings in question. The Respondent accordingly submitted various proposals to the Fire Department.*
- vii. *Eventually, so as not to cause any further delay in the project and so as to avoid jeopardising the safety of the occupants of the buildings in question including the building in which the apartment in question is situated, the Respondent had taken*

a decision to go ahead and construct the second staircase. It is submitted that the construction of the second staircase has been completed and occupation certificate has been obtained by the respondent in respect of the project in question. It is further submitted that the respondent has delivered the possession of the unit in question to the complainants on 06.03.2021.

- XVIII. That the provisions of the Act are not retrospective in nature and the provisions of the Act cannot undo or modify the terms of the agreement duly executed prior to coming into effect of the Act. It is further submitted that merely because the Act applies to ongoing projects which are registered with the authority, the Act cannot be said to be operating retrospectively.
- XIX. That the allegations of the complainants that the delivery of possession of the unit in question has been delayed are wrong, malafide and result of afterthought in view of the fact that the complainants had made several payments to the respondent even after the alleged due date of delivery of possession of the unit. In fact, the last payment was received from the complainants on 22.02.2021.
- XX. That if there was a delay in the manner claimed by the complainants, then the complainants would not have remitted any amount after the supposed due date of delivery of possession of the unit. The allegations of the complainants are irreconcilable, illogical and a result of afterthought. Moreover, it is pertinent to note that the complainants had purchased the unit in question from the complainants in the year 2011.
- XXI. That without admitting or acknowledging in any manner the truth or legality of the allegations levelled by the complainants and without prejudice to the contentions of respondent, it is submitted that the project has got delayed on account of the following reasons which were/are beyond the power and control of respondent:

I. Defaults of Contractor:

- i. That a contract dated 1 November 2010 was executed between the Respondent and M/s B L Kashyap and Sons (BLK/Contractor) in terms of which the Contractor was to construct residential projects being developed by the Respondent in the name and style of "Emerald Estate" and "Emerald Floors Premier", including civil, structure, finishing, MEP, external development, infrastructure, horticulture, EWS, clubhouses, swimming pools, convenience shopping etc. The start date of the project as determined by the parties was 26 July 2010 and the scheduled date of completion of the project was 25 July 2013.
- ii. That the Contractor was not able to meet the agreed timelines for construction of the project. The progress of work at the project site was extremely slow on account of various defaults on the part of the Contractor, such as failure to deploy adequate manpower, shortage of materials etc. in this regard, the Respondent made several requests to the Contractor to expedite progress of the work at the project site. However, the Contractor did not adhere to the said requests and the work at the site came to a standstill.
- iii. That in the aforesaid circumstances, the Respondent was constrained to issue Notice of Termination dated 16.01.2015, terminating the Contract and calling upon the contractor to remove itself from the Project site without removal/damage to the materials, equipment, tools, plant & machinery, and to hand over the Contract documents.
- iv. That the Respondent apprehended that the Contractor would remove from the Project site, material, tools, plant & machinery which would then not be available to the Respondent for use for completion of the Project in terms of Clause 95.1 (GCC) of the Contract. Therefore, the Respondent filed a petition bearing no. O.M.P. No. 100 of 2015 under Section 9 of the Arbitration and Conciliation Act, 1996 before this Hon'ble High Court seeking urgent reliefs in the nature of restraining the Contractor from interfering with the business activities of the Petitioner at the Project site, removing any material, equipment, tools, plant & machinery from the Project site and appointing a local commissioner to inspect the Project site and prepare an inventory of material, equipment, tools, plant & machinery.
- v. However, the parties settled the disputes during the pendency of the aforesaid proceedings and the contractor assured the respondent that the project shall be completed within the decided timeline. This was considered to be in the interest of the Project as well as to mitigate losses, since considerable time would have been spent on re-tendering of the works. Further, the Contractor had also undertaken to complete the Project within the agreed timelines i.e. within eighteen (18) months.
- vi. That in spite of the aforementioned settlement between the Respondent and the Contractor, and with the contractor's assurances that the project will be finished within the agreed timeline, the Contractor did not amend its ways and persistently defaulted in meeting the agreed timelines for completion of the Project.
- vii. That in the meanwhile, the National Building Code (NBC) was revised in the year 2016 and in terms of the same, all high rise buildings (i.e. buildings having height of 15 metres and above), irrespective of the area of each floor, are now required to have two stair cases. Furthermore, it was notified vide Gazette published on 15.03.2017 that the provisions of NBC 2016 supersedes those of NBC 2005. The respondent had accordingly sent representations to various authorities identifying the problems in constructing a second staircase. Eventually, so as to

not cause any further delay in the project and so as to avoid jeopardising the safety of the occupants of the buildings in question, the Respondent had taken a decision to go ahead and construct the second staircase. However, due to the impending BL Kashyap (contractor) issue of non-performance, the construction of the second staircase could not be started as well.

- viii. That in view of the above, the Respondent was constrained to terminate the contract with the Contractor vide termination notice dated 30.8.2018. After termination of the contract, the Respondent filed a petition against the Contractor before the Hon'ble Delhi High Court seeking interim protection against the Contractor so that the Contractor does not, inter alia, disturb the possession and work at the site. Similar petition was also filed by the Contractor against the Respondent.*
- ix. That the aforesaid two petitions, along with two other petitions pertaining to a different contract came up for hearing on 6th of September 2018. The Honourable High Court by order dated 6th of September 2018 disposed of the said cases and issued several directions. The Honourable High Court appointed Justice A P Shah (Retd) as the Sole Arbitrator for adjudication of disputes between the Respondent and the Contractor. Furthermore, RITES Ltd (a Government Undertaking) was appointed as the Local Commissioner to inter alia, inspect and take joint measurement of work done and balance to be done and file its report before the Sole Arbitrator. The High Court gave liberty to the Respondent to award the contract to new agency(ies) for completing the remaining work. However, it was directed that the project site shall be handed over to such new agency(ies) with the permission of the Sole Arbitrator.*
- x. That the arbitration proceedings titled as B L Kashyap and Sons Vs Emaar MGF Land Ltd (arbitration case number 1 of 2018) before Justice A P Shah (Retd), Sole Arbitrator have been initiated.*
- xi. The hon'ble Arbitrator vide order dated 27.04.2019 gave liberty to the respondent to appoint another contractor w.e.f. 15.05.2019.*

XXII. That several allottees have defaulted in timely remittance of payment of installments which was an essential, crucial and an indispensable requirement for conceptualisation and development of the project in question. Furthermore, when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially whereas enormous business losses befall upon the respondent. The respondent, despite default of several allottees, has diligently and earnestly pursued the development of the project in question and has constructed the project in question as expeditiously as possible.

- XXIII. That despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project. The respondent has applied for Occupation Certificate on 16.07.2020 and the same was thereafter issued in favour of the respondent on 11.11.2020.
- XXIV. That all the demands that have been raised by the respondent are strictly in accordance with the terms and conditions of the Buyer's Agreement duly executed and agreed to between the parties. Therefore, no default or lapse can be attributed to the respondent. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent.
- XXV. That 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 as well as execution of Conveyance Deed.

E. Written submissions on behalf of the respondent:

7. The respondent has filed written submissions on 29.09.2025 and submitted as follows:
- I. The present complaint is not maintainable in view of the fact that the Conveyance Deed of the unit in question already stands executed in favour of the complainant, 3 years 6 months prior to filing the present complaint, and the transaction between the complainant and the respondent stands concluded upon the execution of the Conveyance Deed.
 - II. The present complaint is barred by limitation. The complainants having received the offer of possession on 18.11.2020 and having executed the Conveyance Deed on 21.06.2021, have filed the present complaint on 20.12.2024 i.e., after a lapse of 4 years from the date of offer of possession.

III. The execution of the Conveyance Deed is a transfer of a right in property and is not within the jurisdiction of the Authority to entertain a grievance after execution of the Conveyance Deed.

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 these undisputed documents and submission made by the parties.

F. 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:

F. 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.

F. 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;

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.

G. Findings on the objections raised by the respondent.

G.1 Whether the complainants can claim delayed possession charges after execution of the conveyance deed .

13. The respondent stated that the conveyance deed of the unit has already been executed in favour of the complainants on 21.06.2021 and the transaction between the parties stands concluded upon the execution of conveyance deed.
14. The respondent has argued that upon the execution of the conveyance deed, the relationship between the parties is considered concluded, precluding any further claims or liabilities by either party. Consequently, the complainants are barred from asserting any interest in light of the circumstances of the case.
15. In order to comprehend the relationship between the allottee and the promoter, it is essential to understand the definition of a "deed." A deed is a formal, written document that is executed, signed, and delivered by all parties involved in the contract, namely the buyer and the seller. It is a legally binding document that incorporates terms enforceable by law. For a sale deed to be valid, it must be written and signed by both parties. Essentially, a conveyance deed involves the seller transferring all rights to legally own, retain, and enjoy a particular asset, whether immovable or movable. In the present case, the asset in question is immovable property. By signing a conveyance deed, the original owner transfers all legal rights pertaining to the property to the buyer in exchange for valid consideration,

typically monetary. Thus, a "conveyance deed" or "sale deed" signifies that the seller formally transfers all authority and ownership of the property to the buyer.

16. That the execution of a conveyance deed transfers only the title and interest in the specified immovable property (in this case, the allotted unit). However, the conveyance deed does not terminate the relationship between the parties or absolve the promoter of their obligations and liabilities concerning the unit, despite the transfer of title and interest to the allottee upon execution of the conveyance deed.
17. The allottees' have invested their hard-earned money and there is no doubt that the promoter has been enjoying benefits of and the next step is to get the title perfected by executing the conveyance deed which is the statutory right of the allottees. Also, the obligation of the developer-promoter does not end with the execution of a conveyance deed. Therefore, in furtherance to the Hon'ble Apex Court judgement and the law laid down in case titled as ***Wg.Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd. (now known as BEGUR OMR Homes Pvt. Ltd.) and Ors. (Civil appeal no. 6239 of 2019) dated 24.08.2020***, the relevant paras are reproduced herein below:

"34 The developer has not disputed these communications. Though these are four communications issued by the developer, the appellants submitted that they are not isolated aberrations but fit into the pattern. The developer does not state that it was willing to offer the flat purchasers possession of their flats and the right to execute conveyance of the flats while reserving their claim for compensation for delay. On the contrary, the tenor of the communications indicates that while executing the Deeds of Conveyance, the flat buyers were informed that no form of protest or reservation would be acceptable. The flat buyers were essentially presented with an unfair choice of either retaining their rights to pursue their claims (in which event they would not get possession or title in the meantime) or to forsake the claims in order to perfect their titles to the flats for which they have paid valuable consideration. In this backdrop, the simple question which we need to address is whether a flat buyer who espouses a claim against the developer for delayed possession can as a consequence of doing so be compelled to defer the right to obtain a conveyance to perfect their title. It would, in our view, be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, the purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain

a Deed of Conveyance to forsake the right to claim compensation. This basically is a position in which the NCDRC has espoused. We cannot countenance that view.

35. The flat purchasers invested their hard earned money. It is only reasonable to presume that the next logical step is for the purchaser to perfect the title to the premises which have been allotted under the terms pf the ABA. But the submission of the developer is that the purchaser forsakes the remedy before the consumer forum by seeing a Deed of conveyance. To accept such a construction would lead to an absurd consequence of requiring the purchaser either to abandon a just claim as a condition for obtaining the conveyance or to indefinitely delay the execution of the Deed of Conveyance pending protracted consumer litigation."

18. The Authority has already taken a view in **Cr. No. 4031/2019** and others titled as ***Varun Gupta V/s Emaar MGF Land limited and others*** and observed that the execution of a conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the subject unit and upon taking possession, and/or executing conveyance deed, the complainant never gave up his statutory right to seek delayed possession charges as per the provisions of the said Act.
19. Upon reviewing all relevant facts and circumstances, the Authority determines that the complainants/allottees retain the right to seek compensation for delays in possession from the respondent-promoter, despite the execution of the conveyance deed.

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

20. So far as the issue of limitation is concerned, the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Authority Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is universally accepted maxim and the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.

21. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in **MA NO.21 of 2022 of Suo Moto Writ Petition Civil No.3 of 2020** have held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
22. In the present matter the cause of action arose on 18.11.2020 when the offer of possession was made by the respondent. The complainants have filed the present complaint on 23.10.2024. In the present case the period of delay in filing of the case needs to be calculated after taking into account the exclusion period from 15.03.2020 to 28.02.2022. In view of the above, the Authority is of the view that the present complaint has been filed within a reasonable time period and is not barred by the limitation.

H. Findings regarding relief sought by the complainants

H. I Direct the respondent to provide the delayed possession interest at the prescribed rate from the due date of possession till the actual handing over of possession.

23. In the present complaint, the complainants intends to continue with the project and are seeking possession of the unit and delayed possession charges as per section 18(1) of the Act and the same is reproduced below for ready reference:

"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)

24. Clause 11 of the Builder Buyer's agreement (in short, the agreement) dated 29.02.2012, provides for handing over possession and the same is reproduced below:

Clause 11
POSSESSION**"Time of handing over the possession**

*Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Unit **within 24 months from the date of execution of Buyers 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 Unit and/or the Project.*

25. The Builder Buyer's Agreement was executed on 28.02.2012 between the complainants and the respondent. As per clause 11 (a) of the agreement the respondent was to offer the possession of the unit to the allottees within 24 months from the date of execution of the agreement along with a grace period of three months. Therefore, the due date comes out to be 28.05.2014.
26. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges however, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

27. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable

and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

28. 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., 26.11.2025 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.

29. 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;"*

30. On consideration of the documents available on record and submissions made by both the parties 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. The Authority has observed that the Buyer's Agreement was executed on 28.02.2012 between the complainants and the respondent. The possession of the subject unit was to be offered within a period of 24 months from date of the agreement along with a grace period of three months. Thus the due date of possession comes out to be

28.05.2014. The respondent has failed to handover possession of the subject unit on the due date.

31. The Occupation Certificate in respect of the said project was received by the respondent/promoter on 11.11.2020 and the thereafter, the unit was offered to the complainants on 18.11.2020. The Conveyance Deed was executed in favour of the complainants on 21.06.2021.
32. Accordingly, the non-compliance of the mandate contained in section 11(4) (a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainants are entitled to delay possession charges at rate of the prescribed interest @ 10.85% p.a. w.e.f. 28.05.2014 till the date of offer of possession plus two months or handover of possession, whichever is earlier, after obtaining the Occupation Certificate, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

H.II Direct the respondent to refund the various illegal and unreasonable demands by the respondent which were paid by the complainant under protest.

33. The financial liabilities between the allottee and the promoter comes to an end after the execution of the conveyance deed. The complainants could have asked for the claim before the conveyance deed got executed between the parties. Therefore, after execution of the conveyance deed the complainants-allottees cannot seek refund of charges other than statutory benefits if any pending. Once the conveyance deed is executed and accounts have been settled, no claims remains. So, no directions in this regard can be effectuated at this stage.

I. Directions of the authority: -

34. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations

cast upon the promoter as per the functions entrusted to the authority under sec 34(f) of the Act: -

- i. The respondent/promoter shall pay interest at the prescribed rate i.e., 10.85% for every month of delay on the amount paid by the complainants from the date 28.05.2014 till the date of offer of possession plus 2 months or handover of possession whichever is earlier after adjustment/deduction of the amount already paid if any towards delay in handing over of possession as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- ii. The respondent is directed to pay arrears of interest accrued, if any, after adjustment in statement of account, within 90 days from the date of this order as per rule 16(2) of the Act.

35. Complaint stands disposed of.

36. File be consigned to the registry.

Dated:26.11.2025



(Ashok Sangwan)

Member

Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM