

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

Complaint no. : 1363 of 2021  
First date of hearing : 16.04.2021  
Date of decision : 12.08.2021

1. Deepika Agarwal  
2. Karun Bansal  
Both RR/o: Flat No. 802, block J, Godrej Summit,  
Sector 104, Gurugram - 122018.

**Complainants**

Versus

M/s Emaar MGF Land Ltd.  
Address: 306-308, 3<sup>rd</sup> floor, Square One, C2,  
District Centre, Saket, New Delhi -110017.

**Respondent**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Samir Kumar  
Shri Vijay Kumar Goyal

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Shri Sukhbir Yadav Advocate for the complainants  
Shri J.K. Dang along with Shri Ishaan Dang Advocates for the respondent

**ORDER**

1. The present complaint dated 24.03.2021 has been filed by the complainants/allottees in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all

obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter se them.

2. Since, the buyer's agreement has been executed on 27.03.2010 i.e. prior to the commencement of the Act ibid, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of statutory obligation on part of the promoter/respondent in terms of section 34(f) of the Act ibid.

**A. Project and unit related details**

3. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	"Emerald Estate Apartments at Emerald Estate" in Sector 65, Gurugram, Haryana.
2.	Project area	25,499 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	06 of 2008 dated 17.01.2008 Valid/renewed up to 16.01.2025
5.	Name of licensee	Active Promoters Pvt. Ltd. and 2 others C/o Emaar MGF Land Ltd.
6.	HRERA registered/ not registered	<b>"Emerald Estate" registered vide no. 104 of 2017 dated 24.08.2017 for 82768 sq. mtrs.</b>
	HRERA registration valid up to	<b>23.08.2022</b>

7.	Occupation certificate granted on	11.11.2020 [Page 144 of reply]
8.	Provisional allotment letter dated	29.09.2009 [Page 45 of reply]
9.	Revised provisional allotment letter dated	11.03.2010 [Page 46 of reply]
10.	Unit no.	EEA-J-F07-06, 7 <sup>th</sup> floor, building no. ] [Page 47 of complaint]
11.	Unit measuring	1020 sq. ft.
12.	Date of execution of buyer's agreement	27.03.2010 [Page 45 of complaint]
13.	Payment plan	Construction linked payment plan [Page 80 of complaint]
14.	Total consideration as per statement of account dated 08.04.2021 at page 127 of the reply	Rs. 41,48,066/-
15.	Total amount paid by the complainants as per statement of account dated 08.04.2021 at page 128 of reply	Rs. 42,45,137/-
16.	Date of start of construction as per statement of account dated 08.04.2021 at page 127 of the reply	26.08.2010
17.	Due date of delivery of possession as per clause 11(a) of the said agreement i.e. 36 months from the date of commencement of construction (26.08.2010) + grace period of 6 months, for applying and obtaining completion certificate/ occupation certificate in respect of the unit and/or the project. [Page 60 of complaint]	26.08.2013 [Note: Grace period is not included]
18.	<b>Date of offer of possession to the complainants</b>	<b>21.11.2020</b> [Page 101 of complaint]



19.	Delay in handing over possession till 21.01.2021 i.e. date of offer of possession (21.11.2020) + 2 months	7 years 4 months 26 days
-----	---	--------------------------

**B. Facts of the complaint**

4. The complainants have made the following submissions in the complaint:

- i. That in July 2009, the representative of the respondent approached the complainants and represented that a residential project in Sector - 65, Urban Estate, Gurgaon is being developed as "Group Housing Colony" and constructed by the respondent under the name of "Emerald Estate" at "Emerald Hills". The complainants visited the sales office of the respondent and consulted with the marketing staff of the respondent. The marketing staff of the respondent showed a rosy picture of the project and allured with proposed specifications and assured for the timely delivery of the flat. The marketing staff of the respondent gave a brochure of the project and a pre-printed application form and assured that possession of the flat will be delivered with 36 months from the date of the construction as per specification shown in the brochure. The relevant portion of clause no. 20 of the application form is reproduced here for reference "*The Company shall make all efforts to handover the possession of the Unit on expiry of 36 months from the date of construction, subject to certain limitations as provided in the Buyer's Agreement and the timely*

compliance of the provisions of the Buyer's Agreement by the Applicants(s)."

- ii. That on 13.08.2009, being relied on the representation and assurance of the respondent, the complainants booked an apartment in the said project and issued a cheque of Rs. 5,00,000/- for booking amount. The apartment was purchased under the construction link payment plan for a basic sale consideration of Rs. 38,63,380/-.
- iii. That on 29.09.2009, the respondent issued a provisional allotment letter for apartment no. EEA-L-F07-06, in the said project in favour of allottee. That after the issuance of the allotment letter, the respondent called the complainants and informed them that due to change in the plans, they are changing the allotted unit. Thereafter, the respondent allotted the unit in Tower - J of the said project.
- iv. That on 27.03.2010, a pre-printed, arbitrary, unilateral buyer agreement was executed between respondent and allottee. As per clause no. 11(a) of buyer's agreement, the respondent has to give the possession of apartment "within 36 months from the date of commencement of construction and development of the unit". As per buyer's agreement, the respondent is also entitled to a grace period of 6 months. The Construction work on-site was commenced on 26.08.2010. Therefore, the due date of possession was 26.08.2013.
- v. That there the complainants continued to pay the demands as per payment schedule, as and when raised by the respondent. On

- 16.12.2019, the respondent sent a statement of account, which shows complainants have paid Rs. 38,62,332/- against the total cost of apartment Rs. 38,63,380/-.
- vi. That on 21.11.2020, the respondent issued a letter for "Offer of Possession" of flat and demanded Rs. 2,14,326/- under different heads. It is pertinent to mention here that the respondent demanded Rs. 14,160/- under the head administrative charges, Rs. 18,573/- under the head electrification charges and demanded Rs. 42,840/- against the advance maintenance charges. It is pertinent to mention here that said charges were not part of the cost of the property. It is pertinent to mention here that respondent has acknowledged the delay and has credit Rs. 3,82,123/- against the delayed possession compensation. It is further pertinent to mention here that as per the statement of account dated 21.11.2020, the complainants have a credit balance of Rs. 46,954/-.
- vii. That on 24.02.2021, the complainant, Deepika Agarwal, sent an email to the respondent and asked to withdraw the administrative charges and electrification charges and further asked for the withdrawal of advance maintenance charges and asked for area calculation of the flat, but till today i.e. 04.03.2021, there is no reply from the respondent.
- viii. That thereafter, the complainants visited several times to the office of the respondent and asked to withdraw the extra charges.



Moreover, the complainants asked for delayed possession interest at the prescribed rate as per section 18 of the Act. But the respondent did not pay any heed to the just and reasonable demand of the complainants.

- ix. That the main grievance of the complainants in the present complaint is that despite the complainants being paid more than 100% of the actual amounts of apartment, but the respondent party has failed to deliver the possession of fully constructed and developed apartment. The facts and circumstances as enumerated above would lead to the only conclusion that there is a deficiency of service on the part of the respondent party and as such, they are liable to be punished and compensate the complainants.
- x. That for the first-time cause of action for the present complaint arose in March 2010, when the buyer's agreement containing unfair and unreasonable terms were, for the first time, forced upon the allottees. Thereafter cause of action arose in August 2013 when the respondent party failed to handover the possession of the apartment as per the buyer's agreement. Further, the cause of action again arose on various occasions, including on a) July 2015; b) Jan. 2016; c) June 2017, d) October 2018; e) December 2019, f), August 2020, g), November 2020 and on many time till date, when the protests were lodged with the respondent party about its failure to deliver the project and the assurances were given by them that the

possession would be delivered by a certain time. The cause of action is alive and continuing and will continue to subsist till such time as this hon'ble authority restrains the respondent party by an order of injunction and/or passes the necessary orders.

**C. Relief sought by the complainants**

5. The complainants have filed the present complaint for seeking following reliefs:
- i. Direct the respondent to refrain to give effect to unfair, unilateral, arbitrary and one-sided clauses of the buyer's agreement i.e. unreasonable demand and compensation on delayed possession.
  - ii. Direct the respondent to pay interest at the prescribed rate under section 18 of the Act, on the amount paid by the complainants to the respondent as instalments towards the purchase of apartment from the due date of possession till lawful offer of possession (complete in all respect without any preconditions).
  - iii. Direct the respondent party to withdraw the administrative charges and electrification charges.
  - iv. Direct the respondent to withdraw the advance maintenance charges.
  - v. Any other relief/ direction which this authority deems fit and proper considering the facts and circumstances of the present complaint.
6. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been

committed in relation to section 11(4)(a) of the Act and to plead guilty or not to plead guilty.

**D. Reply by the respondent**

7. The respondent has raised certain preliminary objections and has contested the present complaint on the following grounds:

- i. That the complainants have filed the present complaint seeking, inter alia, interest and compensation for alleged delay in delivering possession of the apartment booked by the complainants. It is respectfully submitted that such complaints are to be decided by the adjudicating officer under section 71 of the Act read with rule 29 of the rules and not by this hon'ble authority. The present complaint is liable to be dismissed on this ground alone.
- ii. That 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 27.03.2009. That the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. The provisions of the Act relied upon by the complainants for seeking interest cannot be called in to aid in derogation and in negation of the provisions of the buyer's agreement. The complainants cannot claim any relief which is not contemplated under the provisions of the buyer's agreement. The interest for the

alleged delay demanded by the complainants is beyond the scope of the buyer's agreement. The complainants cannot demand any interest or compensation beyond or contrary to the agreed terms and conditions between the parties.

- iii. That initially, apartment bearing no. EEA-L-F07-06 was provisionally allotted to the complainants having tentative super area of 1020 sq. ft. vide provisional allotment letter dated 29.09.2009 in favour of the complainants. Subsequently, unit no. EEA-J-F07-06 was provisionally allotted to the complainants vide revised allotment letter dated 11.03.2010. Thereafter, buyer's agreement was executed between the complainants and the respondent on 27.03.2010.
- iv. That the complainants had opted for construction linked payment plan and had agreed and undertaken to make payment in accordance therewith. However, the complainants defaulted in payments on several occasions. Consequently, the respondent was constrained to issue notices and reminders for payment. The statement of account reflects the payments made by the complainants and the accrued delayed payment interest thereon as on 08.04.2021. The project has been registered under the Act and the registration of the project is valid till 23.08.2022.
- v. That the respondent has paid Rs.3,82,123/- as delay compensation in accordance with the buyer's agreement. Furthermore, an amount

of Rs.22,819/- has been credited as benefit on account of anti-profiting and Rs.682/- on account of Early Payment Rebate (EPR). Without prejudice to the rights of the respondent, delayed interest if any has to be calculated only on the amounts deposited by the allottees/complainants towards the basic principle amount of the unit in question and not on any amount credited by the respondent, or any payment made by the allottees/complainants towards delayed payment charges or any taxes/statutory payments etc.

- vi. That the time lines for delivery of possession are contingent upon various factors such as time taken by the statutory/competent authority in according approvals, permissions, sanctions, including but not limited to the issuance of the occupation certificate/competition certificate, timely payment of instalments by the allottees and other factors which are beyond the power and control of the respondent.
- vii. That the project got delayed on account of various reasons which were/are beyond the power and control of the respondent and hence the respondent cannot be held responsible for the same. The respondent was constrained to terminating the contract with one of the contractors of the project which has also contributed to delay in construction activities at the site. The contractor was unable to meet the agreed timelines for construction of the project. After termination of the contract, the respondent had filed petition before

the Hon'ble High Court seeking interim protection against the contractor. Similar petition was also filed by the contractor against the respondent. The Hon'ble High Court appointed Justice A.P. Shah (Retd.) as sole arbitrator for adjudication of dispute between the respondent and contractor. 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. The respondent had been diligently pursuing the matter with the contractor before the sole arbitrator and no fault can be attributed to the respondent in this regard and the respondent cannot be held responsible for the same.

- viii. That the respondent completed construction of the apartment/building and applied for the issuance of the occupation certificate on 21.07.2020. The occupation certificate has been issued by the competent authority on 11.11.2020. Upon receipt of the occupation certificate, possession of the apartment has been offered to the complainants vide offer of possession letter dated 21.11.2020. The complainants have been called upon to make remaining payment and complete the necessary formalities required to enable the respondent to hand over possession to the complainants.
- ix. That instead of making balance payment and taking possession of the unit, the complainants have filed the present false and frivolous complaint. It is submitted that the respondent has duly fulfilled its obligations under the buyer's agreement by completing construction



and offering possession in accordance with the buyer's agreement, within the period of validity of registration of the project under the Act, i.e. before 23.08.2022. Thus, there is no default or lapse on the part of the respondent.

- x. That several allottees, including the complainants, have defaulted in timely remittance of payment of installments which was an essential, crucial and an indispensable requirement for conceptualization 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. Therefore, there is no default or lapse on the part of the respondent and there is no equity in favour of the complainants.

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.

**E. Jurisdiction of the authority**

9. The preliminary objections raised by the respondent regarding jurisdiction of the authority to entertain the present complaint stands rejected. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I Territorial jurisdiction**

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with 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. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

**F. Findings on the objections raised by the respondent**

**F.I Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act**

12. The respondent contended that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The respondent further submitted that the provisions of the Act are not retrospective in nature and the provisions of the Act cannot undo or modify the terms of buyer's agreement duly executed prior to coming into effect of the Act.
13. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of *Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)* which provides as under:

- "119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter....
122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

14. Also, in appeal no. 173 of 2019 titled as **Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

15. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under

various heads shall be payable as per the agreed terms and conditions of the buyer's agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of the Act and are not unreasonable or exorbitant in nature.

**F.II Objection regarding handing over possession as per declaration given under section 4(2)(I)(C) of the Act**

16. The counsel for the respondent has stated that the entitlement to claim possession would arise once the possession has not been handed over as per declaration given by the promoter under section 4(2)(I)(C). Therefore, next question of determination is whether the respondent is entitled to avail the time given to him by the authority at the time of registering the project under section 3 & 4 of the Act.
17. It is now settled law that the provisions of the Act and the rules are also applicable to ongoing project and the term ongoing project has been defined in rule 2(1)(o) of the rules. The new as well as the ongoing project are required to be registered under section 3 and section 4 of the Act.
18. Section 4(2)(I)(C) of the Act requires that while applying for registration of the real estate project, the promoter has to file a declaration under section 4(2)(I)(C) of the Act and the same is reproduced as under: -

*Section 4: - Application for registration of real estate projects*

*(2)The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely: —.....*

*(1): -a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating: —*

.....

*(C) the time period within which he undertakes to complete the project or phase thereof, as the case may be....”*

19. The time period for handing over the possession is committed by the builder as per the relevant clause of apartment buyer agreement and the commitment of the promoter regarding handing over of possession of the unit is taken accordingly. The new timeline indicated in respect of ongoing project by the promoter while making an application for registration of the project does not change the commitment of the promoter to hand over the possession by the due date as per the apartment buyer agreement. The new timeline as indicated by the promoter in the declaration under section 4(2)(1)(C) is now the new timeline as indicated by him for the completion of the project. Although, penal proceedings shall not be initiated against the builder for not meeting the committed due date of possession but now, if the promoter fails to complete the project in declared timeline, then he is liable for penal proceedings. The due date of possession as per the agreement remains unchanged and promoter is liable for the consequences and obligations arising out of failure in handing over possession by the due date as committed by him in the apartment buyer agreement and he is liable for the delayed possession charges as provided in proviso to section 18(1) of the Act. The same issue has been dealt by hon'ble

Bombay High Court in case titled as *Neelkamal Realtors Suburban Pvt. Ltd. and anr. vs Union of India and ors.* and has observed as under:

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

**F.III Objection regarding exclusion of time taken by the competent authority in processing the application and issuance of occupation certificate**

20. As far as contention of the respondent with respect to the exclusion of time taken by the competent authority in processing the application and issuance of occupation certificate is concerned, the authority observed that the respondent had applied for grant of occupation certificate on 21.07.2020 and thereafter vide memo no. ZP-441-Vol.II/AD(RA)/2020/20094 dated 11.11.2020, the occupation certificate has been granted by the competent authority under the prevailing law. The authority cannot be a silent spectator to the deficiency in the application submitted by the promoter for issuance of occupancy certificate. It is evident from the occupation certificate dated 11.11.2020 that an incomplete application for grant of OC was applied on 21.07.2020 as fire NOC from the competent authority was granted only on 25.09.2020 which is subsequent to the filing of application for occupation certificate. Also, the Chief Engineer-I, HSVP, Panchkula has submitted his requisite report in respect of the said project on 24.09.2020 &

22.09.2020. The District Town Planner, Gurugram and Senior Town Planner, Gurugram has submitted requisite report about this project on 21.09.2020 and 23.09.2020 respectively. As such, the application submitted on 21.07.2020 was incomplete and an incomplete application is no application in the eyes of law.

21. The application for issuance of occupancy certificate shall be moved in the prescribed forms and accompanied by the documents mentioned in sub-code 4.10.1 of the Haryana Building Code, 2017. As per sub-code 4.10.4 of the said Code, after receipt of application for grant of occupation certificate, the competent authority shall communicate in writing within 60 days, its decision for grant/ refusal of such permission for occupation of the building in Form BR-VII. In the present case, the respondent has completed its application for occupation certificate only on 25.09.2020 and consequently the concerned authority has granted occupation certificate on 11.11.2020. Therefore, in view of the deficiency in the said application dated 21.07.2020 and aforesaid reasons, no delay in granting occupation certificate can be attributed to the concerned statutory authority.

**G. Findings on the reliefs sought by the complainants**

**G.I Delay possession charges**

22. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

***"Section 18: - Return of amount and compensation***

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

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

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

**"11. POSSESSION**

**(a) Time of handing over the possession**

*Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 36 months from the date of commencement of construction and development of the Unit. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of six months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project."*

24. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainants not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as

prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment time period for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

25. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 36 (thirty-six) months from the date of commencement of construction and further provided in agreement that promoter shall be entitled to a grace period of 6 months for applying and obtaining completion certificate/occupation certificate in respect of said unit. The date of start of construction is 26.08.2010 as per statement of account dated 08.04.2021. The period of 36 months expired on 26.08.2013. As a matter of fact, the promoter has not applied to the concerned authority for obtaining completion certificate/ occupation certificate within the grace period prescribed by the promoter in the buyer's agreement. As per the settled law one cannot be allowed to take advantage of his own wrong. Accordingly, this grace period of 6 months cannot be allowed to the promoter at this stage.

26. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prescribed rate. 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 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. Taking the case from another angle, the complainants-allottees were entitled to the delayed possession charges/interest only at the rate of Rs.5/- per sq. ft. per month as per clause 13(a) of the buyer's agreement for the period of such delay; whereas, as per clause 1.2(c) of the buyer's agreement, the promoter was entitled to interest @ 24% per annum at the time of every succeeding instalment for the delayed payments. The

functions of the authority are to safeguard the interest of the aggrieved person, may be the allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of his dominate position and to exploit the needs of the home buyers. This authority is duty bound to take into consideration the legislative intent i.e., to protect the interest of the consumers/allottees in the real estate sector. The clauses of the buyer's agreement entered into between the parties are one-sided, unfair and unreasonable with respect to the grant of interest for delayed possession. There are various other clauses in the buyer's agreement which give sweeping powers to the promoter to cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the buyer's agreement are ex-facie one-sided, unfair and unreasonable, and the same shall constitute the unfair trade practice on the part of the promoter. These types of discriminatory terms and conditions of the buyer's agreement will not be final and binding.

29. 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., 12.08.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
30. 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;"*

31. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.
32. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 11(a) of the buyer's agreement executed between the parties on 27.03.2010, possession of the said unit was to be delivered within a period of 36 months from the date of start of construction i.e. 26.08.2010. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 26.08.2013. In the present case, the complainants were offered

possession by the respondent on 21.11.2020. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 27.03.2010 executed between the parties.

33. 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 11.11.2020. However, the respondent offered the possession of the unit in question to the complainants only on 21.11.2020, 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, they should be given 2 months' time from the date of offer of possession. These 2 months' of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 26.08.2013 till the expiry of 2 months from the date of offer of possession (21.11.2020) which comes out to be 21.01.2021.

34. 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 prescribed rate of the interest @ 9.30 % p.a. w.e.f. 26.08.2013 till 21.01.2021 as per provisions of section 18(1) of the Act read with rule 15 of the Rules.
35. Also, the amount of Rs.3,82,123/- (as per statement of account dated 08.04.2021) so paid by the respondent to the complainants towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.

**G.II Administrative charges**

36. The complainants have submitted that the administrative charges were not part of the cost of property under buyer's agreement, therefore, the respondent is liable to withdraw the said charges. On the contrary, the respondent submitted that the advance maintenance charges are payable by the complainants under clause 5 of the buyer's agreement.
37. With respect to the administrative charges, the following provision has been made under clause 5 of the buyer's agreement and the same is reproduced for ready reference:

**"5. SALE DEED**

*The sale deed ("Sale Deed") shall be executed and got registered in favour of Allottee(s) within six months from the date of receipt of occupation certificate, Total Consideration, PLC, additional EDC, and additional IDC, if any, late payment charges interest and other charges and subject to*

*compliances of all other terms and conditions of this Buyer's Agreement by the Allottee(s). The cost of stamp duty, registration charges and other incidental charges and expenses will be borne by the Allottee in addition to the Total Consideration of the Unit, as and when demanded by the Company...."*

38. The terms 'Administrative charges' have not been defined in the buyer's agreement. However, as per the letter of offer of possession dated 21.11.2020, 'Administrative charges' has been defined as "*This pertains to Lawyer fee & other expenses incurred at the Sub-Registrar office for execution of the Conveyance/Sale Deed in your favour*".
39. The authority after hearing the arguments made by the parties is of the view that charges which are defined in the agreement are payable by the allottee and any charge which is not part of the agreement will not and shall not be charged/payable by the allottee. It has also been observed by the authority time and again that a lot of charges under the head of various names are being demanded from the allottee which are arbitrary and unjustified. Hon'ble Supreme Court and various High Courts in plethora of judgments have held that a term of a contract shall not be binding if it is shown that the same were one sided and unfair and the person signing did not have any other option but to sign the same. Reference can also be made on the directions rendered in the **Pioneer Urban Land and Infrastructure Limited Vs. Govindan Raghavan** passed by the Hon'ble Apex Court as well as Bombay high court in the **Neelkamal Realtors Suburban Pvt. Ltd. (supra)**. A similar view has also been taken by the Apex court in **IREO Grace Realtech Pvt. Ltd. Vs.**

**Abhishek Khanna & Ors.** dated 11.01.2021. Therefore, the charges so claimed under the agreement should be reasonable and agreeable by the allottee. Further, the charges should not be exorbitant and should be charged on average basis as per the normal practice in this regard.

40. With respect to the contention of the allottee regarding demand of administrative and incidental charges, the authority is of the view that the charges which have to be essentially paid by the allottee to the government/statutory bodies for getting the transfer/conveyance registered in its name and those charges are recoverable for which official receipt is issued by such government/statutory body. A similar view has been taken by the Panchkula Authority in **complaint no. 2223 of 2019 in Amit Mehra Vs. Piyush Buildwell India Ltd.** along with connected matters.
41. The administrative registration of property at the registration office is mandatory for execution of the conveyance (sale) deed between the developers (seller) and the homebuyer (purchaser). Besides the stamp duty, homebuyers also pay for execution of the conveyance/sale deed. This amount, which is given to developers in the name of registration charges, is significant and the amount can be as steep as ₹25,000 to ₹80,000. **In a circular issued on 02.04.2018, the DTP's office fixed the registration charges per flat at ₹15,000 in furtherance to several complaints received from homebuyers** that developers charge 1.5% of the total cost of a property in the name of administrative charges for the

registration of flats/units. The authority considering the pleas of the developer-promoter is of the view that a nominal amount of up to Rs.15000/- may be charged by the promoter – developer for any such expenses which it may have incurred for facilitating the said transfer as has been fixed by the DTP office in this regard. In the present complaint, as per letter of offer of possession dated 21.11.2020, the respondent has charged a sum of Rs.14,160/- (including GST) towards the administrative charges. Therefore, the respondent is right in demanding the same.

### **G.III Advance maintenance charges**

42. The complainants have submitted that the said charges were not part of the cost of property under buyer's agreement, therefore, the respondent is liable to withdraw the said charges. On the contrary, the respondent submitted that the advance maintenance charges are payable by the complainants under clause 18 of the buyer's agreement.
43. The authority is of the view that as far as issue regarding advance maintenance charges is concerned where the builder buyer's agreements have been entered into before coming into force the Act, the matter is to be dealt with as per the provisions of the builder buyer's agreement. With respect to advance maintenance charges, the relevant clause of the builder buyer's agreement is as follows:

#### **"18. MAINTENANCE**

- (a) The Allottee(s) hereby agrees and undertakes that he/she/they/it shall enter into a separate Tripartite Maintenance Agreement in the draft provided as Annexure-9 with the Maintenance Agency.*

(b) *The Allottee(s) further agrees and undertakes to pay the indicative and approximate maintenance charges as may be levied by the maintenance agency for the upkeep and maintenance of the Project, its common areas, utilities, equipment's installed in the building and such other facilities forming part of the Project. Such charges payable by the Allottee(s) will be subject to escalation of such costs and expenses as may be levied by the Maintenance Agency. The Company reserves the right to change, modify, amend and impose additional conditions in the Tripartite Maintenance Agreement at its sole discretion from time to time."*

44. The reading of the above clauses shows that the amount towards maintenance charges, being demanded by the promoter, shall be utilized towards the upkeep and maintenance of the project, its common areas, utilities, equipment's installed in the building and such other facilities forming the part of the project. The maintenance of the project is essential to enjoy the basic facilities provided in the project by the promoter. Therefore, while providing these essential services, the promoter would be required to maintain sufficient funds with him. In order to meet these expenses, the demand of the promoter raised on the allottee to pay advance maintenance charges for a certain period cannot by any stretch of imagination be said to be unreasonable or unjustified. However, in the present complaint, the respondent has failed to provide time period for which the said charges are being collected and an embargo has to be placed on the entitlement of the promoter in this regard.

45. The authority is of the view that the respondent is entitled to collect advance maintenance charges as per the builder buyer's agreement

executed between the parties. However, the period for which advance maintenance charges (AMC) is levied should not be arbitrary and unjustified. As no period has been specified for charging advance maintenance charges, a large number of buyer's agreement of different projects of the said respondent have been referred and it was observed that generally, AMC is charged by the builders/developer for a period of 6 months to 2 years. The authority is of the view that the said period is required by the developer for making relevant logistics and facilities for the upkeep and maintenance of the project. Since, the developer has already received the occupation certificate and it is only a matter of time that the completion of the project shall be achieved; its ample time for a RWA to be formed for taking up the maintenance of the project and accordingly the AMC is handed over to the RWA. However, the respondent shall not demand the advance maintenance charges for more than one year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.

46. In the present complaint, vide letter of offer of possession dated 21.11.2020, the respondent has charged advance maintenance charges for a period of 12 months. Keeping in view the facts discussion, the authority deems fit that the respondent is right in demanding advance maintenance charges at the rate prescribed therein for a period of 12 months at the time of offer of possession.

**G.IV Electrification charges**

47. The complainants have submitted that the said charges were not part of the cost of property under buyer's agreement, therefore, the respondent is liable to withdraw the said charges. On the contrary, the respondent submitted that electrification charges are payable by the complainants under clause 2 of the buyer's agreement.
48. The license to develop a colony is granted on an application made under section 3(1) of the Haryana Development and Regulation of Urban Areas Act, 1975 and Director Town and Country Planning grant license under section 3(3)(a) of Act *ibid*. The developer also enters into an agreement in the prescribed form for carrying out and completion of development work in accordance with the license granted. After the colonizer has laid out the colony in accordance with the approved layout plan and executed the internal development works in accordance with the approved designs and specifications, he may apply to the Director for grant of completion or part completion certificate as per section 3(6) of the Haryana Development and Regulation of Urban Areas Act, 1975.
49. The definition of the internal development works is defined in section 2(i) of the Haryana Development and Regulation of Urban Areas Act, 1975 as under:
- 2(i) *"internal development works" mean –*
- (i) *Metaling of roads and paving of footpaths;*
  - (ii) *Turfing and plantation with trees of opens spaces;*
  - (iii) *Street lighting;*
  - (iv) *Adequate and wholesome water supply;*

- (v) *Sewers and drains both for storm and sullage water and necessary provision for their treatment and disposal; and*
- (vi) *Any other work that the Director may think necessary in the interest of proper development of a colony;*

From the above definition, it is clear that street lighting services forms an integral part of the internal development works and promoter is duty bound to provide internal development works as per conditions of license and for obtaining part completion/ completion certificate.

50. It is the duty of the colonizer to arrange the electric connection from the outside source for electrification of their colony from Haryana Vidhyut Parsaran Nigam/Dakshin Haryana Bijlee Vitran Nigam Limited, Haryana. The installation of internal electricity distribution infrastructure as per the peak load requirement of the colony shall be the responsibility of the colonizer, for which the colonizer will be required to get the "electric (distribution) services plan/estimates" approved from the agency responsible for installation of "external electrical services" i.e., Haryana Vidhyut Parsaran Nigam/Dakshin Haryana Bijlee Vitran Nigam Limited, Haryana and complete the same before obtaining completion certificate for the colony.

51. The promoter has offered the possession of the said unit after obtaining occupation certificate and occupation certificate is granted under code 4.10 of Haryana Building Code, 2017 wherein the competent authority grants occupation certificate only after completion of necessary infrastructural work as mentioned therein meaning thereby that the

water supply, sewerage, electricity, road, drainage etc. have been provided by the promoter and it is all but natural that providing of such services is necessary for making a unit habitable and ready for possession to the allottee.

52. There may be a case of charges for some of the services separately if a specific provision alongwith quantification of the charges have been specifically provided in the builder buyer's agreement but there also acceptability and admissibility of such charges will depend on examination of such charges on case to case basis.
53. The following provision has been made in the buyer's agreement under clause 2 in respect of the electrification charges which reads as under:

**"2. COSTS & EXPENSES**

*The Allottee(s) agrees and undertakes to pay all **additional amounts**, including but not limited to **any additional costs**, expenses, deposits, charges for bulk supply of electrical energy, instalment of **additional transformers**, sub-stations or any transmission line in respect of the Project as demanded by the Company and/or the nominated maintenance agency ("Maintenance Agency") from time to time."*

*(emphasis supplied)*

54. As per above provision in the builder buyer's agreement, the allottee has to pay only for the additional amounts and additional costs for installation of additional transformers, etc. which categorically concludes that such charges are payable only when the additional expenses are incurred by the promoter. As far as cost of providing basic electrification is concerned, it is to be borne by the promoter and forms part of the basic sale price otherwise on the same analogy, the builder may charge for

other internal development services and external development services separately from the allottee at its own will.

55. The language in the builder buyer's agreement is so vague, that if promoter wants then he can charge for everything including boundary wall, roof etc. The Department of Town and Country Planning has provided certain norms for infrastructure and services which have been specified in the Haryana Building Code, 2017. These are necessarily to be provided as per condition of the license and accordingly it is presumed that the charges for such infrastructure and services are part of the basic sale-price of the unit. Even if it is presumed that the builder has provided for charging of such services in the buyer's agreement, then also he should have disclosed the basis and costing of the same so that the allottee is in a position to take decision whether to buy such unit or not. The kind of vague language used in the buyer's agreement is against all canons of natural justice and transparency and very safely can be referred as unfair trade practice.

56. In the present complaint, no such specific provision has been made in the buyer's agreement to charge for electrification and as per offer of possession dated 21.11.2020, the respondent has charged Rs.18,573/- towards electrification charges. Accordingly, the respondent shall not charge electrification charges and the same is disallowed.

**H. Directions of the authority**

57. 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 the interest at the prescribed rate i.e. 9.30 % per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 26.08.2013 till 21.01.2021 i.e. expiry of 2 months from the date of offer of possession (21.11.2020). 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.
- ii. Also, the amount of Rs.3,82,123/- so paid by the respondent to the complainants towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.
- iii. The respondent shall not charge Rs.18,573/- towards electrification charges from the complainants.
- iv. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement. The respondent is also not entitled to claim holding charges from the complainants/allottees at any point of time even after being part of

the builder buyer's agreement as per law settled by hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

58. Complaint stands disposed of.

59. File be consigned to registry.

  
(Vijay Kumar Goyal)  
Member

  
(Samir Kumar)  
Member

  
(Dr. K.K. Khandelwal)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.08.2021

Judgement uploaded on 23.10.2021.

  
**HARERA**  
**GURUGRAM**