

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

Complaint no. : 405 of 2020  
First date of hearing : 17.03.2020  
Date of decision : 12.10.2021  
Order pronounced on: 15.12.2021

1. Babita Tiwari  
2. Yogesh Tiwari  
Both RR/o: H.No. H-41/7, DLF Phase-I,  
Gurugram, Haryana -122002.

**Complainants**

Versus

M/s Emaar MGF Land Ltd.  
Office: 306-308, Square One, C-2,  
District Centre, Saket, New Delhi-110017.

**Respondent**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Vijay Kumar Goyal

**Chairman  
Member**

**APPEARANCE:**

Shri Sukhbir Yadav  
Shri J.K. Dang

Advocate for the complainants  
Advocate for the respondent

**ORDER**

1. The present complaint dated 28.01.2020 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.

**A. Project and unit related details**

2. 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 Floors Premier III at Emerald Estate, Sector 65, Gurugram.
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	Registered vide no. 104 of 2017 dated 24.08.2017 for 82768 sq. mtrs.
7.	HRERA registration valid up to	23.08.2022
8.	Occupation certificate granted on	11.11.2020 [As per additional documents submitted by the respondent]
9.	Date of provisional allotment letter	28.09.2011 [Page 32 of complaint]
10.	Unit no.	EFP-III-44-0301, 3 <sup>rd</sup> floor, building no. 44 [Page 38 of complaint]
11.	Unit measuring	1975 sq. ft.
12.	Date of execution of buyer's agreement	07.03.2012 [Page 37 of complaint]

13.	Payment plan	Construction linked payment plan [Page 57 of complaint]
14.	Total consideration as per statement of account dated 29.11.2021 as per additional documents submitted by the respondent	Rs. 1,35,94,337/-
15.	Total amount paid by the complainants as per statement of account dated 29.11.2021 as per additional documents submitted by the respondent	Rs.1,15,85,565/-
16.	Due date of delivery of possession as per clause 11(a) of the said agreement i.e. 24 months from the date of execution of buyer's agreement along with grace period of 3 months, for applying and obtaining the occupation certificate in respect of the unit and/or the project. [Page 46 of complaint]	<b>07.03.2014</b> [Grace period not included]
17.	Date of offer of possession to the complainants	<b>14.12.2020</b> [As per additional documents submitted by the respondent]
18.	Delay in handing over possession w.e.f. 07.03.2014 till 14.02.2021 i.e., date of offer possession (14.12.2020) + 2 months	6 years 11 months 7 days

**B. Facts of the complaint**

3. The complainants have made followings submissions in the complaint:

- i. That the complainants got to know about Emerald Floor Premier, project situated at Sector - 65, Gurugram promoted by a reputed Emaar MGF Land Limited i.e., the respondent party, through a real

estate agent. The complainants along with their family members and real estate agent of respondent(s) visited the site. The location was excellent, and they consulted the local representative of the developer. The local representative of developer allured the complainants with attractive brochure and special characteristics of finishing of flat.

- ii. That believing on representations and assurances of the respondent and real estate agent, the complainants Mrs. Babita Tiwari & Mr. Yogesh Tiwari booked a flat/ floor admeasuring 1975 sq. ft. bearing no. EPF-III-44-0301 in "Emerald Floor Premier", Sector - 65, Gurugram on 03.08.2011 and paid Rs.10,00,000/- vide cheque no.-567616 drawn on State Bank of India, dated 03.08.2011 as booking amount and signed a pre-printed application form. Flat was purchased under the construction link payment plan for sale consideration of Rs. 1,25,87,794 including B.S.P., E.D.C., I.D.C and PLC.
- iii. That on 28.09.2011, the respondent issued a provisional allotment letter in favour of the complainants by allotting unit no. EPF-III-44-0301, admeasuring 1975 sq. ft. for a total sale consideration of 1,25,87,794/-. On 07.03.2012, a pre-printed, unilateral and ex-facie buyer's agreement/ agreement to sell was executed between the complainants and the respondent. As per clause 11 of buyer's agreement, the respondent has to give the possession of flat

"within a period of twenty-four (24) months from the date of execution of builder buyer's agreement", inter alia due date of possession was 07.03.2014 and with 3 months grace period due date of possession was 07.06.2014.

- iv. That thereafter the complainants continued to pay the remaining instalments as per the payment schedule of the apartment buyer's agreement and have already paid more than 86% of the total sale consideration i.e. Rs. 1,09,01,187/- out of the total cost of the apartment, along with interest and other allied charges of the actual purchase price, but when the complainants observed that there has been no progress in the construction of the flat as well as the project for a long time, they raised their grievances to the respondent. It is submitted that the complainants were always ready and willing to pay the remaining instalments, provided that there was some progress in the construction of the flat.
- v. That the main grievance of the complainants in the present complaint is that in spite of the complainants having paid more than 86% of the actual amount for the said flat and being ready and willing to pay the remaining amount due (if any), the respondent has failed to deliver the possession of the flat on time. That the project is already delayed by more than 5 years till January 2020 and the respondent has not given the possession of flat.

vi. That the cause of action for the present complaint arose in or around 2012 when the buyer's agreement containing unfair and unreasonable terms was, for the first time, forced upon the allottees. The cause of action again arose in June 2014, when the respondent failed to handover the possession of the flat as per the terms of the buyer's agreement. The cause of action further arose on various occasions, including on: a) Sep. 2015; b) March, 2019; c) August, 2019; d) December, 2019 and on various other occasions. The cause of action is alive and continuing and will continue to subsist till such time as this hon'ble authority restrains the respondent by an order of injunction and/or passes the necessary orders.

**C. Relief sought by the complainants**

4. The complainants are seeking the following relief:
- i. Direct the respondent to refrain to give effect to unfair, unilateral, arbitrary and one-sided clauses of agreement i.e. offer of possession and compensation on delay possession etc.
  - ii. Direct the respondent to give possession of floor/flat within 6 months of filing of this complaint (duly completed with proposed and agreed amenities).
  - iii. Direct the respondent to give delayed possession interest from due date of possession till handing over the possession.

- iv. Direct the respondent to provide valid occupation certificate (without any pre-conditions).
  - v. Any other relief / direction which the hon'ble authority deems fit and proper in the facts & circumstances of the present complaint.
5. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

**D. Reply filed by the respondent**

6. The respondent has contested the complaint on the following grounds:
- i. That the complainants have filed the present complaint seeking possession and interest on account of the alleged delay in delivery of possession of the unit booked by the complainants. It is respectfully submitted that complaints pertaining to refund, compensation and interest 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. Moreover, it is respectfully submitted that the adjudicating officer derives his jurisdiction from the central act which cannot be negated by the rules made thereunder.
  - 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 07.03.2012. 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. 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. The provisions of the Act relied upon by the complainants for seeking interest cannot be called in to aid in derogation and ignorance of the provisions of the buyer's agreement. The interest is compensatory in nature and cannot be granted in derogation and ignorance of the provisions of the buyer's agreement. The interest for the alleged delay demanded by the complainants is beyond the scope of the buyer's agreement. The complainants cannot demand any interest beyond the terms and conditions incorporated in the buyer's agreement.

- iii. That the complainants, in pursuance of the application form dated 03.08.2011, were allotted an independent unit bearing no. EFP-III-44-0301, located on the third floor, in the project vide provisional allotment letter dated 28.09.2011. The complainants consciously and willfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to respondent that they shall remit every installment on time as per the payment schedule.
- iv. That the complainants were irregular regarding the 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. Statement of account dated 28.02.2020 as maintained by respondent in due course of its business reflects the delay in remittance of various instalments on the part of the complainants.

- v. That the buyer's agreement dated 07.03.2012 was executed between the complainants and respondent. 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. In case of delay caused due to non- receipt of occupation certificate, completion certificate or any other permission/sanction from the competent authorities, no compensation or any other compensation shall be payable to the allottees. The complainants, having defaulted in timely remittance of instalment, are thus not entitled to any compensation or any amount towards interest as an indemnification for delay, if any, under the buyer's agreement.
- vi. That clause 11(b)(iv) of the buyer's agreement provides that in case of any default/delay by the allottees in payment as per schedule of payment incorporated in the buyer's agreement, the date of handing over of possession shall be extended accordingly, solely on respondent's discretion till the payment of all outstanding amounts to the satisfaction of respondent. Since, the complainants have defaulted in timely remittance of payments as per schedule of payment, the date of delivery of possession is not

liable to be determined in the manner sought to be done in the present case by the complainants.

- vii. That the project of the respondent is an "ongoing project" under the Act and the same has been registered under the Act and the rules. Registration certificate has been granted by the Haryana Real Estate Regulatory Authority vide memo no. HRERA-482/2017/829 dated 24.08.2017. 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 the respondent, it is respectfully submitted that the complaint preferred by the complainants is devoid of any cause of action. It is submitted that the registration of the project is valid till 23.08.2022 and therefore cause of action, if any, would accrue in favour of the complainants to prefer a complaint if the respondent fails to deliver possession of the unit in question within the aforesaid period.
- viii. That the delay, if any, in the project has got delayed on account of the following reasons which were/are beyond the power and control of the respondent. *Firstly*, the National Building Code was revised in the year 2016 and in terms of the same, all high-rise buildings (i.e. buildings having area of less than 500 sq. mtrs. and above), irrespective of area of each floor, are now required to have two staircases. 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. 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 has taken a decision to go ahead and construct the second staircase. It is expected that the construction of the second staircase will be completed in a year's time. Thereafter, upon issuance of the occupation certificate and subject to force majeure conditions, possession of the apartment shall be offered to the complainants. Secondly, the defaults on the part of the contractor M/s B L Kashyap and Sons (BLK/Contractor). 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. 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. Hon'ble arbitrator vide order dated 27.04.2019 gave liberty to the respondent to appoint another contractor w.e.f. 15.05.2019.

ix. 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

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 respondent. 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 respondent and there is no equity in favour of the complainants. Thus, the present complaint deserves to be dismissed at the very threshold.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.

**E. Jurisdiction of the authority**

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

**E.1 Territorial jurisdiction**

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of

Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with 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**

10. 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;*

*The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.*

#### **Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section

11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

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

**F.1 Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act**

12. One of the contentions of the respondent is that the 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 hon'ble Bombay High Court in *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* 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 buyer's 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 or refund would arise once the possession has not been handed over as per declaration given by the promoter under section 4(2)(I)(C) i.e., 23.08.2022. 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)(1)(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)(1)(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..."*

#### G. Findings of the authority

##### G.I Delay possession charges

20. **Relief sought by the complainants:** The below-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and these reliefs are interconnected:

- i. Direct the respondent to refrain to give effect to unfair, unilateral, arbitrary and one-sided clauses of agreement i.e., offer of possession and compensation on delay possession etc.

- ii. Direct the respondent to give possession of floor/flat within 6 months of filing of this complaint (duly completed with proposed and agreed amenities).
  - iii. Direct the respondent to give delayed possession interest from due date of possession till handing over the possession.
  - iv. Direct the respondent to provide valid occupation certificate (without any pre-conditions).
21. 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."*

22. Clause 11(a) of the buyer's agreement dated 07.03.2012 provides time period for handing over the possession and the same is reproduced below:

***"11. POSSESSION***

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

*Subject to terms of this clause and subject to 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.”*

23. 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.
24. **Due date of possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 24 (twenty -four) months from the date of execution of buyer's agreement dated 07.03.2012 and further provided in agreement that

promoter shall be entitled to a grace period of 3 months for applying and obtaining occupation certificate in respect of said unit. The period of 24 months expired on 07.03.2014. As a matter of fact, the promoter has not applied to the concerned authority for obtaining completion certificate/ occupation certificate within the time limit 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 3 months cannot be allowed to the promoter at this stage.

25. **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.

26. The legislature in its wisdom in the subordinate legislation under rule 15 of the rules has determined the prescribed rate of interest. The rate

of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

27. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 12.10.2021 is 7.30%. Accordingly, the prescribed rate of interest will be MCLR +2% i.e., 9.30%.

28. **Rate of interest to be paid by complainants for delay in making payments:** The respondent contended that the complainants have defaulted in making timely payments of the instalments as per the payment plan, therefore, they are liable to pay interest on the outstanding payments.

29. The authority observed that 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. 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 delay possession charges.
31. On consideration of the documents available on record and submissions made by both the parties, 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 07.03.2012, possession of the booked unit was to be delivered within 24 (twenty -four) months from the date of execution of buyer's agreement and it was further provided in agreement that promoter shall be entitled to a grace period of 3 months for applying and obtaining occupation certificate in respect of said unit. 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 07.03.2014. The respondent was directed to place on record copy of occupation certificate, letter of offer of possession and updated statement of account within 10 days from the date of order i.e., 12.10.2021. However, the respondent has placed on record the said documents on 30.11.2021. Occupation Certificate has been received by the respondent on 11.11.2020 and the possession of the subject unit was offered to the complainants on 14.12.2020. Copies of the same have

been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 07.03.2012 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 07.03.2012 to hand over the possession within the stipulated period.

32. 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. The respondent offered the possession of the unit in question to the complainants only on 14.12.2020. 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, the complainants should be given 2 months' time from the date of offer of possession. These 2 months' of reasonable time is being given to the complainants keeping in mind that even after intimation of possession, practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of



possession i.e. 07.03.2014 till the expiry of 2 months from the date of offer of possession (14.12.2020) which comes out to be 14.02.2021.

33. 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 at prescribed rate of interest i.e. 9.30% p.a. w.e.f. 07.03.2014 till 14.02.2021 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

**H. Direction of the authority**

34. 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. 07.03.2014 till 14.02.2021 i.e., expiry of 2 months from the date of offer of possession (14.12.2020). 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. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. The rate of interest

chargeable from the complainants /allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delay possession charges as per section 2(za) of the Act.

iii. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement. The respondent shall not demand/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.


35. Complaint stands disposed of.

36. File be consigned to registry.

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.12.2021

  
(Dr. K.K. Khandelwal)  
Chairman

Judgement uploaded on 27.12.2021.